

D355dor1 trial

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
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3 UNITED STATES OF AMERICA,

4 v.

12 CR. 45 (RJS)

5 JERMAIN DORE and DWAYNE
6 BARRETT,

7 Defendants.
-----x

9 March 5, 2013
10 12:40 p.m.

11 Before:

12 HON. RICHARD J. SULLIVAN,

13 District Judge

14 APPEARANCES

15 PREET BHARARA

16 United States Attorney for the
17 Southern District of New York

BY: JESSICA MASELLA

AMY LESTER

Assistant United States Attorneys

ALICE L. FONTIER

Attorney for Defendant Dore
-and-

LAW OFFICES OF YING STAFFORD

BY: YING STAFFORD

HURWITZ, STAMPUR & ROTH

Attorneys for Defendant Barrett

BY: JAMES M. ROTH

-and-

SIMON & PARTNERS, LLP

BY: KENNETH C. MURPHY

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trial

1 (Trial resumed;

2 THE COURT: Have a seat.

3 It is now 12:40. So, I could swear them now and then
4 give them my preliminary instructions now and then we break for
5 lunch and then we hit the ground running right after lunch with
6 the openings, or we could take an earlier lunch and then come
7 back at like 1:30 or 1:45 and I will do preliminary
8 instructions and go straight to the openings then.

9 Anybody have a preference?

10 MS. FONTIER: The latter is my preference, and I would
11 like to raise one issue just prior to the openings.

12 THE COURT: Yes. Okay. What is the issue?

13 MS. FONTIER: Ms. Brown, Janiel Brown, who will be
14 testifying, the government alerted us to a potential area of
15 testimony that we would object to which is that at least it is
16 in her 3500 material that at a point when they were -- she
17 states that she and Mr. Dore were fighting she also stated that
18 he hit her with a broomstick at some point. We don't believe
19 that that is relevant testimony and think it is overly
20 prejudicial and it is just not necessary at this point.

21 So, I did want to raise that issue certainly -- I
22 don't know if the government would intend to open on those
23 facts.

24 THE COURT: Do you plan to open on that?

25 MS. LESTER: No, your Honor. Certainly not.

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1 THE COURT: We can deal with that later. It could be
2 conceivably relevant as to bias or motive.

3 MR. ROTH: Judge, I do have a slight horse in the race
4 because if she's going to be characterized in a certain way
5 down the road in terms of her testimony and her bias for or
6 against Mr. Dore it affects my client as well. So, I don't
7 know if you are prepared to rule on that or if the government
8 is going to prove that up in terms of --

9 THE COURT: Well, let's ask this question. Is the
10 government intending to introduce testimony about this act of
11 violence -- domestic violence I guess is what it is?

12 MS. LESTER: Yes, we are, your Honor.

13 THE COURT: For what purpose?

14 MS. LESTER: Your Honor, there is a series of text
15 messages between Ms. Brown and Mr. Dore. The incident that
16 Ms. Fontier referred to where Mr. Dore hits Ms. Brown with a
17 broomstick is actually a crucial conversation between them via
18 text message in which Ms. Brown threatens to go to the police
19 because he has hit her with a broomstick. And so, Mr. Dore
20 responds that if she does go to the police he in turn will tell
21 the police that she was his driver for robberies and he will
22 tell them about at least one specific robbery that she was
23 involved in.

24 THE COURT: There is obviously relevance there so what
25 is the defense position?

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1 MS. FONTIER: Your Honor, I certainly may need to
2 review the text messages. When I read through them it was not
3 that clear to me that that was the conversation that was being
4 had. I don't think it goes back and forth that directly but --
5 I mean, I think that testimony could be elicited that they were
6 arguing or that they fought but I just think the violent act is
7 just overly prejudicial and doesn't actually add anything to
8 her testimony.

9 THE COURT: Well, it certainly provides context for
10 the text, it sounds like.

11 Look. The government is not going to open on it so I
12 think we can discuss whether or not there should be some
13 limiting of the testimony or a limiting instruction when the
14 testimony comes in. But, I don't think we can resolve this now
15 and I do want to have the jury come back before they wonder
16 what is going on.

17 So, Mr. Roth, you are not going to open on that act of
18 domestic violence?

19 MR. ROTH: I will not, your Honor.

20 THE COURT: Okay. And you are not either then, right,
21 Ms. Fontier.

22 MS. FONTIER: No. Certainly not, your Honor.

23 THE COURT: So, I think it won't affect the openings.

24 So, anybody else have a preference? I am inclined to
25 swear them now because that will make them sort of feel like

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1 they're locked in and then we will -- then I will excuse them
2 for lunch and do preliminary instructions at 1:45. Does that
3 sound good? Then we will go straight to openings.

4 MS. FONTIER: Your Honor, I don't know if your Honor
5 is planning to add it into the preliminary instructions, but
6 there are two jurors that are seated now and in the 12 who did
7 raise some serious time concerns. So, I don't know if you are
8 going to address that or say anything.

9 THE COURT: Well, I hadn't planned to say much of
10 anything other than trial is going to start and we are going to
11 sit four days a week for pretty full days and see where we are
12 in terms of time. I hadn't planed to say anything other than
13 what you have seen.

14 MS. FONTIER: Okay.

15 THE COURT: All right. So let's bring them in. We
16 will swear them in and I will excuse them for lunch.

17 (Continued on next page)

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trial

1 (Jury present)

2 THE COURT: So, we will get this down. I think the
3 best thing to do is probably line up in order in the jury room
4 and then come in that way and that way you can sort of quickly
5 hit your seats without climbing all over each other. It is a
6 little tight in there, especially with the monitors, but you
7 will figure that out. And I think generally when you come in,
8 come in along the window and then come in through the doors
9 that way. There is another door closer to the window. It is
10 easier, you don't have to pass through as many people. Okay?

11 So, what we are going to do now is I'm going to have
12 you take your oath as jurors so I'm going to ask you all to
13 stand and raise your right hands.

14 (Jury of 12 and 3 alternates was impaneled and sworn)

15 THE COURT: So, what we are going to do now is I'm
16 going to excuse you for lunch. You are now the jury so this is
17 the real deal. It took us a little while to pick a jury but it
18 was an important process and fair process so now you are jurors
19 and are alternates. So, if you can be back here ready to go at
20 1:45, that's an hour, that will give you time to eat. There is
21 a lot of places around, I think you probably went there
22 yesterday. There is no shortage of places along Worth Street
23 and also up into Chinatown. Don't use the cafeteria because
24 that's where -- the lawyers and parties use that. I don't want
25 you bumping into each other.

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1 Again, if you see any of the folks from the courtroom
2 when you are out at lunch or coming back into the building
3 don't acknowledge them, don't say anything. It is not being
4 rude or impolite, you are following my instructions.

5 When you come back after lunch I will then give you
6 preliminary instructions on what it means to be a juror and how
7 the trial will proceed. And after that we will start the
8 trial.

9 So, with that, then I will see you at 1:45.

10 All rise for the jury.

11 (Continued on next page)

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trial

1 (Jury not present)

2 THE COURT: Have a seat.

3 Anything else we should cover before we break for
4 lunch?

5 MS. MASELLA: No, your Honor.

6 MR. ROTH: Nothing from the defense.

7 MS. FONTIER: Thank you, your Honor.

8 THE COURT: So, I will see you back here at, let's say
9 1:40. Okay? Thanks.

10 I have another matter, so if you can clear out as
11 quickly as you can, that would be appreciated. But don't leave
12 the courtroom for maybe a couple of minutes, give the jurors
13 time to get out. So, clear the space here but don't leave the
14 courtroom for at least a few minutes.

15 (Continued on next page)

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1 AFTERNOON SESSION

2 1:40 p.m.

3 (In open court; jury not present)

4 THE COURT: Are we all set?

5 MS. FONTIER: One moment, please, your Honor.

6 THE COURT: I'll give the preliminary instructions and
7 then we'll go right to openings. Is anybody using
8 demonstratives?

9 MS. FONTIER: I will not be.

10 MR. ROTH: Neither will I.

11 MS. LESTER: Nor will I.

12 THE COURT: Let's bring in the jury.

13 (Jury present)

14 THE COURT: Why don't you just remain standing until
15 everybody gets in. I think that's the way we usually do it.16 Okay. Have a seat. I hope you had a nice lunch. And
17 as I said, you can bring water. Was there water and drinks and
18 things in the jury room? Good. Okay. And we'll take an
19 afternoon break, and I expect we'll have some snacks, and
20 cookies and fruit I usually order. If it's not to your liking,
21 let US know. We'll try to make sure that you are comfortable.22 Now that you have been sworn, I will going to give you
23 some preliminary instructions to guide you in your
24 participation as jurors in this trial. I'm going to read some
25 of it, and my reason for doing that is because some of these

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1 instructions on the law are important and require a certain
2 amount of precision, I want to make sure I don't misstate the
3 law in any way. So if parts of it are read, I apologize for
4 breaking my eye contact with you, but understand why.

5 As jurors, it's your duty to find from the evidence
6 what the facts are. You, and you alone, are the judges of the
7 facts. From that you decide what happened. You decide what
8 happened from the evidence presented at trial, from the
9 exhibits presented at trial. You will then have to apply those
10 facts to the law as I give it to you. As I said before, you
11 must follow the law as I give it to you, even if you don't
12 agree with the law as I explain it to you.

13 Nothing that I say or do during this trial is intended
14 to indicate in any way what your verdict should be. So don't
15 speculate as to what I may be thinking. You are the judges of
16 the facts. I'm the judge of the law, and we don't interfere
17 with each other. Okay? So you accept the law as I give it to
18 you and you decide the facts without any interference from me.

19 The evidence from which you will find the facts will
20 consist of the testimony of the witnesses and documents and
21 other things that might be introduced as exhibits at trial.
22 There may also be what are called sometimes stipulations, and
23 they're just agreements between the lawyers to certain facts.
24 You are to accept those facts as true when there's a
25 stipulation, although it's still for you to decide how much

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1 weight, if any, to give to those facts.

2 Certain things are not evidence, and I want to go
3 through some of those now. These are things that must not be
4 considered by you as evidence as you deliberate in this case.

5 Statements, arguments, and questions of the lawyers
6 are not evidence.

7 Objections to questions are not evidence. Right?
8 You've all seen TV: "Objection." Lawyers have an obligation,
9 a duty, to object when they believe that there's evidence being
10 offered that's in violation or contrary to the rules of
evidence, so they will say objection sometimes. And then I
11 will rule on those objections. So you shouldn't be influenced
12 by the fact that a lawyer made an objection. Nor should you be
13 influenced by my ruling on it. Don't worry about that.
14 Objection just means that the witness stops and then I rule,
15 and, depending on how I rule, the witness either answers or we
16 move on. Okay? If the objection is sustained, you've all
17 heard that term, "sustained," that means the witness will not
18 be permitted to answer the question and you should disregard
19 the question. Ignore it completely. If the objection is
20 overruled, that means simply that the witness will be permitted
21 to answer the question and you should treat that answer like
22 any other answer. The fact that there was an objection doesn't
23 make it more or less important. Okay?

25 If you are instructed that an item of evidence is

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1 being received for a limited purpose only, then you must follow
2 my instruction on that, and I'll give you instructions as we
3 go. If I strike an answer or if I instruct you to disregard an
4 answer, then that testimony is not evidence and may not be
5 considered by you. All right? So you have to consciously say
6 I'm not going to consider that, the judge told me to disregard
7 it, so I won't consider that as the evidence. So I expect you
8 to follow that instruction.

9 Anything that you see or hear outside the courtroom is
10 not evidence and must be disregarded. Your verdict must be
11 based solely on the evidence presented here in this courtroom
12 during this trial.

13 One of the most important tasks you have as a juror is
14 to evaluate the credibility of the witnesses, the witnesses who
15 will testify here in this courtroom, from this witness stand.
16 It will be up to you to decide which witnesses to believe,
17 which witnesses not to believe, and how much of any witness'
18 testimony to accept as true. I will give you some guidelines
19 for determining credibility of witnesses at the end of the
20 case. In the meantime, please listen carefully to the
21 witnesses as they testify and bear in mind that you'll be
22 called upon to evaluate their credibility and their
23 truthfulness when you deliberate. So pay careful attention,
24 and, at the end of that process, at the end of this process,
25 when you're deliberating, you'll have to consider who was

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1 telling the truth, who was not telling the truth, who you
2 believe, and how much weight to give to the testimony.

3 Under the law, as I told you before, a defendant in a
4 criminal case is presumed innocent. He cannot be found guilty
5 of the crimes charged unless the jury, after having heard all
6 the evidence in the case, unanimously decides that the evidence
7 proves the defendant guilty beyond a reasonable doubt.

8 In a criminal case, the burden of proof remains with
9 the prosecution, the government, the folks at the front table.
10 For the jury to return a verdict of guilty as to the
11 defendants, the government must prove that each of the
12 defendants is guilty beyond a reasonable doubt. A person
13 charged with a crime has absolutely no burden to prove that he
14 is not guilty, and if the defendants choose not to present any
15 proof, that decision cannot be held against them and may not
16 enter into your deliberations at all.

17 Now, a few words about the conduct of this trial.
18 First, during the trial, you are not to discuss the case with
19 anyone, nor are you to permit anyone to discuss it with you.
20 Until you retire to the jury room at the end of the case to
21 deliberate, you're simply not to talk about the case. Don't
22 even discuss the case with each other until you begin your
23 actual deliberations. So there will be breaks and you'll go
24 into the jury room, don't discuss it. Don't say, What did you
25 think of his testimony, or, What did you think of her

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1 testimony, or, Wow, that was pretty interesting, wasn't it. I
2 don't want you to consider or discuss or begin your
3 deliberations now. All that's for later. Right now, you're
4 just observing. You can go back in there and chat about all
5 sorts of things. You're such interesting people, plenty of
6 things to talk about, but don't discuss the case until you have
7 heard all the evidence, until you have heard the arguments from
8 the lawyers in summation, until you have heard my instructions
9 on the law. Until that point, you're really not in a position
10 to be forming hard opinions and to be deliberating prematurely.

11 If you see the lawyers or the witnesses or the court
12 staff in the hallway or elevators, as I told you before, don't
13 speak to them and they won't speak to you. Again, they're not
14 being impolite; you're not being impolite. The goal here is to
15 avoid any opportunity for improper contact, and just as
16 importantly it's to avoid any appearance of improper contact.
17 Right? If someone saw you talking to one of the lawyers and
18 laughing and just chatting away, they may not know what you
19 were talking about. It may just have been about a ballgame or
20 the weather, but it might look bad. It looks like there's
21 something improper going on. That's the reason we want to
22 avoid any appearance of improper contact. That's why I
23 instruct them not to talk to you and I instruct you not to talk
24 to them at all for the duration of the trial. Okay?

25 Second, don't read or listen to anything touching on

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1 this case in any way. As I said before, I don't know if this
2 case will generate any publicity, but if it does, you're
3 instructed not to read, listen to, or watch any news reports or
4 other reports about the case. Okay? You should not be
5 influenced by anything you might hear or see outside the
6 courtroom. So if you're reading the newspaper and you see an
7 article that touches on this -- again, this is hypothetical, I
8 don't know if this is the case -- quickly move to a different
9 article or different part of the paper and let me know
10 afterwards. Don't discuss it or let anyone else know what you
11 saw. Tell my law clerk, Mr. Halegua, whom you've met, and
12 he'll tell me, and we'll follow up. Again, I don't know if
13 this will happen, but I will tell you what to do if it does
14 happen.

15 If anybody should try to talk to you about this case,
16 bring that to my attention as well by telling Mr. Halegua. Do
17 not tell anyone else, not even your fellow jurors. If someone
18 reached out to you, you saw something, you heard something, you
19 stumbled across it, whatever it was, don't tell each other.
20 Just tell him and then I'll follow up and whatever it is we'll
21 deal with it. If you've seen something you shouldn't have
22 seen, I don't want you sharing it with other people because you
23 could taint their mind, so be mindful of that.

24 Don't talk about or read about the facts or
25 circumstances of this case on any social networking sites.

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1 Don't go to Facebook. Don't go to MySpace. Don't "Tweet"
2 about it on Twitter. A lot of people want to talk about their
3 interesting experiences, and there are entire social media
4 dedicated to this, and I understand it's kind of interesting.
5 But this is not proper for that. If you were to do that, it
6 would mean that I would probably have to declare the trial as a
7 mistrial and we would have to start all over because you really
8 can't be deliberating, you can't be communicating, you can't be
9 talking about the case until you're in your formal
10 deliberations.

11 There have been some cases where, in fact, jurors have
12 not complied with that instruction and it resulted in trials
13 having to be done over. Take that very seriously. Don't be
14 tempted. Parallel to that is don't do any research or any
15 investigation online or elsewhere. It's tempting to do that,
16 Oh, the judge, let's see what else he does or what he's about,
17 let's find out about these lawyers, see about the witnesses,
18 don't do that. Don't do any kind of Internet searches. Don't
19 do any kind of searches at all. Don't go to the locations that
20 you've heard about in court. I don't want you doing any
21 investigations, any inspections of any kind. Again, that could
22 compromise the entire trial.

23 The evidence is what comes in at this trial, in this
24 courtroom. And that's what you're limited to, and that's
25 enough. That's enough for you as jurors and you should be

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1 focused on that.

2 Fourth, if at any point in the trial you recognize
3 someone in the courtroom, including a friend or a significant
4 other, just somebody you know, let us know that. There is
5 nothing improper about that. It's a public courtroom.
6 Everybody is welcome to come in, and so it's not that they
7 would be doing anything wrong; it's just that there may be
8 times when we're having conversations outside of your presence
9 and if you have a friend or some other person who is in the
10 audience, they may not realize that they shouldn't tell you
11 about that later. They will not have been here for parts of
12 the trial where you got instructions from me. Just let us know
13 if you know someone in the courtroom and we will take
14 precautions if there are any precautions to be taken. So let
15 us know if anybody is here to pick you up or if you are going
16 to get together afterwards. It's fine if they come, just let
17 us know.

18 Finally, don't form any opinion until all the evidence
19 is in. Keep an open mind throughout the trial. I'm going to
20 remind you of that almost at every break. I'll say: Don't
21 discuss the case. Keep an open mind. You'll get bored of me
22 saying it, but it's important that I repeat it because I don't
23 want you to forget. Don't decide any facts until after you
24 have heard all the evidence, until after you have heard the
25 closing arguments of the lawyers, until after you have heard;

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1 my instructions on the law because until then you are really in
2 no position to form hard opinion.

3 You are permitted to take notes during the trial.

4 I'll hand out notepads before we start with the openings. I'll
5 give you a pen. I'll give you a pad. You should write your
6 name on the pad if you want to take notes. You don't have to
7 take notes, if you want to take notes, only take notes in the
8 pad. Write your name on the outside of the pad so no other
9 juror confuses their notes with your notes, and, at the end of
10 the day, leave your notes in the jury room. We'll collect them
11 and keep them safe so no one can get to them, and we'll return
12 them to you the next day. But don't take them home with you
13 and don't share them with anybody else.

14 Remember, any notes that you take are for your use
15 only, and they're only to be used as an aid to your memory.
16 Your memory is what controls. If you do take notes, be careful
17 not to get so involved in taking notes that you're missing half
18 the testimony. At some point, in school, we all did that, we
19 were taking so many notes we were missing half the lecture.
20 Don't get so involved that you're not able to catch the
21 testimony. We have a court reporter here. We have the best
22 court reporters in the world, we really do. They're the best
23 in their field, and their job is to take it all down. There
24 will be a transcript at the end of this case. If there is
25 anything you want to hear, any testimony you want to read or

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1 have read back, we can get it for you, and I'll give you
2 instructions about that. Your notes can be helpful. If you
3 want to take notes, perfectly fine. But remember, they're an
4 aid to your memory. If there is any dispute between your notes
5 and another juror's notes or between your notes and another
6 juror's memory, the notes don't break the tie. The only thing
7 that breaks the tie is the transcript. If you have questions
8 about what exactly was the testimony, let us know, and we'll
9 give you the testimony and you can decide. But, again, that's
10 only when you're in deliberations, not before.

11 During the course of the trial, exhibits will be
12 received in evidence. You'll hear "Exhibit 16 is received."
13 They'll be marked by exhibit number. If there is any exhibit
14 at the end of the case during deliberations that you'd like to
15 see, let us know, and we'll send the exhibit back into the jury
16 room and you can look at it and examine it as you think
17 appropriate.

18 At the end of the trial, bear in mind I'm going to
19 give you a list of all the witnesses who testified with their
20 proper spellings. I'm going to give you a list of all the
21 exhibits that have been received. So take notes if you'd like,
22 but you don't have to worry about, Oh, I forgot what the
23 exhibit was or I forgot the name of that witness because I'll
24 give you all of that. It will be available to you in the jury
25 room. You'll have the names and you'll have the exhibits.

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1 Now, we're about to begin this trial. Our typical day
2 will begin at 9:30 a.m. Let me ask you -- some of you are
3 traveling distances to get here; those of you from Westchester
4 and north and west of Westchester have a long way to go, and
5 I'm sympathetic -- but make sure you get here on time. Make
6 sure you're ready to go at 9:30. I promise that I'll make sure
7 we're ready to go at 9:30, and if we each keep that promise,
8 then we'll be able to be efficient and use the time to its
9 maximum potential.

10 If any of you are late, it means we all have to wait.
11 All of you, your fellow jurors, court reporters, judges,
12 lawyers, everybody else will have to wait. So, if you are
13 running late and you can call, then please call. I'll make
14 sure you have Mr. Halegua's number so you can call us if you're
15 running late, but hopefully you won't even have to do that
16 because you will have built in some buffer time that will allow
17 to you get here on time. I will make sure that in the mornings
18 we have coffee and some breakfast stuff. So if you get here
19 early, you'll be comfortable at least. That will be available
20 to you and might be an extra incentive to make sure you're here
21 in plenty of time. But 9:30 is when I want to start so we can
22 use the whole morning.

23 We'll go from 9:30 until one, which is when we take
24 our typical lunch break. We'll probably have one short
25 bathroom break in the middle of the morning and then we'll

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1 usually pick up from two until 5:30 in the afternoon. And we
2 might take a short break in the afternoon as well, and maybe
3 there will be some days we might end a little earlier because I
4 have other matters and I can't squeeze them in other times. I
5 worked through lunch today. I try to schedule things before
6 you're here, while you're at lunch, after you leave, so it
7 doesn't interfere with your time. But there are some cases
8 where I have to do things at 4:30 or 5:00. I'll let you know
9 when that is, but presume 5:30 is when we'll finish. We won't
10 go past 5:30 unless I give you plenty of warning and unless
11 it's okay with all of you. We'll be ending at 5:30 today.

12 Let me tell you how the trial will proceed. First
13 we're going to have opening statements. The government will
14 make an opening statement. After that, I expect the attorney
15 for each of the defendants will make an opening statement, but
16 they're not required to make an opening statement.

17 The opening statements are not proof, they're not
18 evidence, they're not arguments. They're simply outlines of
19 what the attorneys believe the evidence will show. And they're
20 given to help you follow the evidence as it comes in later. So
21 if you think of it as a preview to a movie, that's what the
22 opening is.

23 After the opening statements, the government will
24 present its case. The government will call its witnesses, and
25 after each witness testifies on direct examination, then the

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1 lawyers for the defendants will have an opportunity to
2 cross-examine those witnesses. You've all seen it on TV, you
3 know how that goes. After the defendants have cross-examined
4 the witnesses, then there might be a little bit of what's
5 called redirect examination, then after that maybe
6 recross-examination, but each of them gets shorter and shorter
7 as it goes.

8 Following the government's case, after they've rested,
9 the defendants then will have an opportunity to present the
10 case. But they don't have to. Again, they have no burden.
11 The defendant is presumed innocent and the defendant,
12 therefore, has no obligation to produce any evidence
13 whatsoever. But if the defendants wish to present a defense
14 case, then the defense witnesses will testify on direct
15 examination. Then the government will cross-examine them, and
16 we'll have a little bit of redirect, a little bit of recross.

17 After the defense rests, then we will have summations.
18 Okay? Summations, you've all seen on TV, are the closing
19 arguments. That's the lawyers' opportunity to summarize the
20 evidence and to give their closing arguments, their
21 interpretation of what the evidence showed.

22 Now, again, what the lawyers argue is helpful. It's
23 designed to be useful to you. But it's not evidence, and you
24 should scrutinize the evidence when you're deliberating. What
25 the lawyers say doesn't matter. What you think happened is

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1 based on the evidence. That is the key. Following the
2 summations, I will then give you instructions on the law, and
3 you will then finally retire to begin your deliberations.
4 That's how the trial goes.

5 You have a tremendously important job as jurors in
6 this system. The Constitution recognizes you as officers. Our
7 system of justice is predicated on jurors being the finders of
8 fact, so that's your job. It's to determine the facts. You,
9 not me, you alone are the judges of the facts. So, pay careful
10 attention throughout the trial. If you're having difficulty
11 hearing or seeing, you need to stretch or need a break, you'll
12 let us know, but the trial is now about to begin. So with
13 that, I'm going to turn it over to the government.

14 Who is giving the opening statement?

15 MS. LESTER: I am, your Honor.

16 THE COURT: Ms. Lester, however you want to set up the
17 courtroom will be fine.

18 Let me give you pads. I'm sorry. Don't start, Ms.
19 Lester. And pens. Okay. Everybody has a pad? Everybody have
20 a pen? Hang on to those pens. With sequestration, it might be
21 the last pen you see. No. We have pens; I'm joking. Just
22 remember to put your names on the front cover and leave them
23 here at the end of the day, not here in the jury box, but in
24 the jury room.

25 All right. With that, we'll begin with the opening

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Opening - Ms. Lester

1 statements.

2 MS. LESTER: Thank you, your Honor.

3 THE COURT: Ms. Lester, you may proceed.

4 MS. LESTER: Good afternoon.

5 In 2011 and early 2012, a violent robbery crew
6 terrorized victims in the Bronx, Mount Vernon, and
7 Pennsylvania. The two men sitting here before you today,
8 Jermaine Dore and Dwayne Barrett, are the defendants in this
9 case, and they were the core members of this robbery crew.

10 Dore and Barrett, along with others, carried out numerous
11 violent robberies between August 2011 and January 2012. Nearly
12 every day during the period, they were out on the street
13 looking for their victims, following them, gathering
14 information about their routines, and actually committing
15 robberies during that time, robberies during which they
16 brutally assaulted their victims, brandished knives, and fired
17 guns. Ultimately, during one robbery that took place in
18 December of 2011, the defendants shot and killed one of their
19 victims because he refused to hand over his money.

20 That's why we're here today, ladies and gentlemen.
21 For committing these robberies, Dore and Barrett are charged in
22 an indictment with multiple violations of federal criminal
23 laws. They're both charged with participating in a conspiracy,
24 that's just an agreement, to commit robberies. They're also
25 charged with two specific robberies and firearms and murder

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Opening - Ms. Lester

1 charges relating to those specific robberies.

2 During the course of this trial, you're going to hear
3 the evidence that proves that they committed these crimes
4 beyond a reasonable doubt.

5 So, how did Dore and Barrett's crew operate? Well,
6 during the trial, you'll learn that they usually targeted their
7 victims based on information they received from the owner of a
8 local store in the Bronx. This was a man named Fahd Hussain,
9 who they knew as Ali or Mo. The victims were often people who
10 did business with Hussain, and he would give Dore and Barrett
11 important details about the victims, where they lived or worked
12 and when they would be carrying large amounts of cash.

13 Dore and Barrett would use this information to conduct
14 surveillance of their victims before actually robbing them,
15 following them as they went about their daily business,
16 tracking their movements, and looking for the best time to
17 strike.

18 Barrett, you'll learn, almost always drove his car, a
19 dark blue Mercedes-Benz sedan. He was usually the planner and
20 the driver for the robberies, but he was also willing to do
21 whatever he needed to do to make sure that the robberies
22 succeeded. Barrett was also in charge of the robbery proceeds,
23 and he would divide up the money amongst the crew members.

24 Now, Dore was the one who often carried out the
25 hand-to-hand violence against the victims in many of the

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Opening - Ms. Lester

1 robberies, punching victims, forcing them to the ground, even
2 shooting and killing one victim. Together, with the other
3 members of the crew, they were out on the streets looking for
4 victims to rob nearly every day for months on end.

5 I'm going to give you a few examples of the robberies
6 you'll hear about during the course of the trial. You're going
7 to hear about a robbery that took place in the Bronx on an
8 unusually snowy day in October 2011. You'll hear that Dore,
9 Barrett, and other members of the robbery crew robbed the owner
10 of a poultry market in the Bronx. This was a man who knew Fahd
11 Hussain. The robbery crew staked out the victim's home on
12 Radcliff Avenue for several hours, sitting in Barrett's
13 Mercedes sedan. Then they followed him when he went to the
14 local mosque for evening prayers, and they abducted him outside
15 the mosque. The robbers drove the victim from the mosque to a
16 street near his house and took his keys so that one of them
17 could enter the house and steal his money.

18 Another robber kept the victim hostage in the minivan,
19 but what they didn't know is that the victim's brother and two
20 young nephews were at the house waiting for the victim to
21 return from the mosque. The robbers held the victim's
22 relatives hostage, down with a gun, while they ransacked the
23 house looking for money. They eventually made off with \$15,000
24 in cash.

25 These robbers didn't confine themselves to the Bronx.

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Opening - Ms. Lester

You'll also hear about a robbery that took place in August 2011, many, many miles away, in Matamoras, Pennsylvania. Dore and Barrett, along with two other people, drove all the way from the Bronx to Matamoras in order to rob the owner of a gas station as he made his weekly trip to the bank to deposit cash. The robbers assaulted the victim and made off with \$45,000 in cash.

These robberies were typical of how the crew worked. They worked together to plan deliberate, violent attacks on their unsuspecting victims. They had weapons on hand to carry out the attacks, including baseball bats, knives, and guns, and they didn't hesitate in using them. That was certainly the case in December 2011, during a robbery that took place in Mount Vernon that resulted in a murder.

Dore and Barrett followed the victim as he went about his business that morning, tracking him from a hotel in the Bronx where he was staying. When the victim took a taxi from the hotel to Mount Vernon, Dore and another member of the crew hijacked the taxi, drove off with the victim still in the back seat, and shot and killed him after he threw the money out of the moving vehicle. These are just three of the robberies that you'll hear about during the course of the trial, just three examples of the robberies that Dore, Barrett, and their crew attempted and carried out every day for months.

Now, you might be asking yourselves what type of

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Opening - Ms. Lester

1 evidence you are going to hear. There are three types of
2 evidence that we'll offer to prove this case: Witness
3 testimony, physical evidence, and evidence related to the cell
4 phones used by the defendants and the other robbers.

5 In terms of witnesses, you're going to hear firsthand
6 from many of the victims of these robberies. Most of them,
7 you'll learn, are small business owners dealing largely in cash
8 and selling items like cigarettes or telephone calling cards.
9 They will tell you how they were going about their usual
10 business when, all of a sudden, they were attacked and robbed.
11 Some of the victims were violently punched and beaten by the
12 robbers and others were threatened with knives or guns.

13 Now, as you might expect, these witnesses probably
14 will not be able to identify the defendants as the people who
15 robbed them. You'll learn that the robbers wore masks most of
16 the time. Many of the victims were violently assaulted and
17 feared for their lives during the robberies, but they'll tell
18 you what they remember and what they saw during the robberies.

19 You'll also hear from law enforcement witnesses,
20 including police officers who responded to the robbery scene
21 and to the scene of the murder in this case.

22 In addition, you're going to get an insider's view of
23 how the robbery crew operated and what Dore and Barrett did
24 during the robberies from people who know firsthand because
25 they also participated in some of the robberies. These

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Opening - Ms. Lester

1 witnesses might refer to Dore and Barrett as well as the other
2 members of the crew by their nicknames because that's how they
3 knew them. Dore was Blaqs and Barrett was Tall Man. These
4 inside witnesses will give you details about the robberies that
5 you could never get from victims or police officers; how Dore
6 and Barrett planned the crimes, why they targeted particular
7 victims, and what they did to keep from getting caught. These
8 inside witnesses will tell you that they were with Dore and
9 Barrett when they committed some of the robberies that you'll
10 hear about during the trial, and they'll also tell you that
11 Dore and Barrett told them about other robberies that they did
12 when these witnesses weren't present.

13 Now, a word about these witnesses. They've admitted
14 their own involvement in robberies and have entered into
15 agreements with the government to provide information and
16 testimony at this trial. Now, you'll certainly be troubled by
17 their conduct. After all, they're going to tell you that they
18 participated in robberies, and you may not agree with the
19 decisions that they've made. But what's important is that you
20 listen to their testimony as you would to any other witness and
21 use your common sense to evaluate it against the other evidence
22 in the case.

23 When they're testifying, ask yourselves: Is their
24 testimony consistent with the other evidence in the case? Does
25 it make sense? When you do that, we submit that you will find

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Opening - Ms. Lester

1 that their testimony is backed up by the other independent
2 evidence in the case, from the testimony of the victims, to the
3 other evidence linking the defendants to these robberies.

4 Now, besides witnesses, as I mentioned, you'll see
5 many cases of physical evidence, including shell casings
6 recovered at the scene of two of the robberies, masks and
7 gloves, photographs of Barrett's Mercedes-Benz, surveillance
8 video that captures some of the robberies, photographs and maps
9 of the robbery locations, and cell phones used by the
10 defendants. And you'll learn that Dore, Barrett, and the other
11 robbery crew members frequently used their cell phones while
12 committing the robberies to communicate with each other and
13 with Fahd Hussain about the victims.

14 As I just mentioned, you'll see some of these actual
15 cell phones, but we're also going to present evidence relating
16 to the phone calls that were made by Dore, Barrett, and the
17 other crew members.

18 Now, I want to let you know in advance that this
19 evidence is going to be especially detailed, and you may not
20 understand the significance of it right away. You're going to
21 hear from witnesses at the phone companies that kept the
22 records for the cell phones used by the robbers. These are
23 called call detail records. They show the calls made to and
24 from the phones. But the records also include what's called
25 cell site information, and that's data that shows which cell

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Opening - Ms. Lester

1 phone towers were used during a particular call at a particular
2 time.

3 Later in the trial, after you've heard about the
4 dates, times, and locations of the robberies, you'll hear from
5 a summary phone witness. This witness is going to show you
6 maps that plot the locations of the towers used by the robbers'
7 phones at a particular time and on a particular date using that
8 cell site data I just talked about. I'm going to ask you to be
9 patient as the evidence comes in because by the end of the
10 summary witness' testimony, you'll understand the significance
11 of the cell site evidence. Again, you'll have heard about the
12 dates, times, and locations from the victims and other
13 witnesses, and then you'll be able to compare that information
14 to the cell site locations, the towers that were used by the
15 defendants' phone on those same dates and times.

16 As you might expect from what I've said so far, most
17 of the evidence in this trial isn't going to come in all at
18 once or in chronological order. Instead, it's going to come in
19 in bits and pieces, one witness at a time, and, in most
20 instances it's going to take a few witnesses for you to get a
21 full picture of what happened on that particular date at a
22 particular time. But when we come to the end of the case and
23 you've seen all the evidence and heard the closing arguments,
24 you will be convinced that these defendants are guilty of the
25 charges against them.

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Opening - Ms. Lester

1 It's probably obvious to you from what I've said so
2 far this is a very serious case, and, like all criminal trials,
3 it's an important trial, both for the government and for the
4 defendants. And as jurors, you have important
5 responsibilities, too. Pay close attention to the evidence as
6 it comes in, and listen carefully to the witnesses' testimony
7 and to Judge Sullivan's instructions on the law.

8 Finally, use your common sense to guide you, the same
9 common sense that you rely on in making important decisions in
10 your own lives. Rely on your common sense and your life
11 experience as you watch the trial and use it to help you weigh
12 the credibility of the witnesses. If you do all these things,
13 the defendants will get a fair trial, and, if you do all these
14 things, at the end of the trial, you will return the only
15 verdict that is consistent with the evidence and with justice,
16 that the defendants are guilty of the crimes charged in the
17 indictment.

18 Thank you.

19 THE COURT: Thank you, Ms. Lester.

20 We'll now hear from Ms. Fontier on behalf of Mr. Dore.

21 MS. FONTIER: Yes, your Honor. Thank you.

22 Good afternoon, ladies and gentlemen.

23 Ladies and gentlemen, the government is making a lot
24 of assumptions. Their case has a lot of conjecture, and you're
25 going to hear some very unreliable testimony.

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Opening - Ms. Fontier

Now, at the end of this case, you will have heard from many victims. You will have heard from many police officers. I believe that you will have heard overwhelming evidence that these crimes occurred. But what you will also hear is a distinct lack of evidence that Jermaine Dore is the person who committed these offenses. At the end of this case, that is the question that I will ask you to decide, whether the government has proved beyond a reasonable doubt that it is Jermaine Dore that actually committed those offenses.

Now, the government is going to rely, as you just heard, on cell phone records, cell tower maps, and the testimony of cooperating witnesses. They're resorting to their cooperating witnesses because the victims and the police officers cannot identify Mr. Dore as the person who committed these offenses.

Now, there are some facts, as I said, that will not be in dispute. You're going to hear evidence of about 17 robberies, I believe. We will not dispute that these robberies occurred over the course of a year and a half, in the Bronx, White Plains, Yonkers, various different places. You're also going to hear that in December, during the course of one of these robberies, a person was killed. We will not dispute those facts.

Also not in dispute is the fact that Mr. Dore knows Mr. Barrett, that they spoke on the phone, that they have

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Opening - Ms. Fontier

1 ridden in a car together, that they're friends. You'll see
2 their phone records. You'll see that they called each other
3 regularly. But Mr. Dore knowing Mr. Barrett does not equal Mr.
4 Dore and Mr. Barrett committing crimes together. That's an
5 assumption that the government wants you to make. But being
6 friends with someone, knowing someone, does not make you
7 guilty.

8 So, now, without identifications of Mr. Dore, again,
9 the government is turning to two cooperating witnesses. The
10 first is Patrick Taylor. Mr. Taylor will take this witness
11 stand and tell you that he committed some of these robberies,
12 the robberies you're going to hear evidence about. He's also
13 going to admit that he is a big-time marijuana dealer. And
14 then he's going to point at Mr. Dore and accuse him of
15 committing these crimes, too. He's going to do that because
16 he's looking for a get-out-of-jail-free card. Mr. Taylor is
17 someone with a motive to lie, and I will ask you at the end of
18 this case to judge his credibility and whether that motive
19 overcame his truth telling.

20 The second witness that is cooperating with the
21 government that you'll hear from is Janiel Brown. Now, Janiel
22 Brown and Mr. Dore were dating until very recently. Janiel
23 Brown was actively participating in this case from the time of
24 his arrest in January of 2012. You will hear her testify on
25 this stand.

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Opening - Ms. Fontier

1 Now, this will not be the first time that she's sat in
2 this witness stand. In a previous proceeding, she testified
3 for Mr. Dore. She took that stand and said that the agents in
4 this case were not telling the truth. She swore under oath,
5 just like she will when she talks to you, that the agents in
6 this case were not telling the truth. At the end of that
7 proceeding, these prosecutors argued that she was not a
8 credible witness. The witness that they're going to put on the
9 stand to testify against Mr. Dore, these two same prosecutors
10 have already said she did not tell the truth in court.

11 MS. LESTER: Objection, your Honor.

12 THE COURT: Objection as to what you're going to
13 argue? Sustained.

14 MS. FONTIER: This is a witness who has already
15 testified and who the government has already claimed is not
16 credible when she testifies in court. That is Janiel Brown.
17 That is their cooperator.

18 Now, at the end of this, as I said, you are going to
19 be able to ask to evaluate the evidence. You're going to have
20 to look at all of the evidence, and you will hear an
21 instruction from the Court at the end that evidence is not
22 about the quantity, but it's about the quality. And when you
23 hear a great quantity of evidence about robberies occurring,
24 you still must decide if the government has proved beyond a
25 reasonable doubt, through reliable evidence, that Mr. Dore is

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Opening - Ms. Fontier

1 actually the person who committed these crimes.

2 You're also going to be told that it's not just the
3 evidence that's presented, but it's the lack of evidence. And
4 in this case, there's a very significant lack of evidence that
5 Mr. Dore is actually the person that committed these offenses.
6 No. 1, something that I've already touched on, you're going to
7 hear from multiple victims, upwards of 20, testifying about 17
8 different robberies. And now the government has already said
9 sometimes the people that committed these robberies wore masks.
10 Sometimes they didn't.

11 Also, listen to the descriptions of the people that
12 were given by these victims. They either do not describe Mr.
13 Dore or are so vague as to describe any average-sized black
14 man. You will not hear one of these victims who was face to
15 face with their robber say that Mr. Dore is the person that
16 committed this offense. That's a serious lack of evidence.

17 The second is that over the course of a year and a
18 half, as each of these robberies was committed, they were
19 investigated by various agencies, the NYPD, Yonkers PD, the
20 ATF. You're going to hear from many police officers, many
21 special agents, about the thorough investigation that went into
22 these offenses. In all of those different crimes, they do not
23 have one single fingerprint left by Mr. Dore.

24 Now, similarly, through all of their investigation,
25 their forensic work, they don't have a piece of DNA evidence

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Opening - Ms. Fontier

1 tying Mr. Dore to these offenses. Not a hair, not a piece of
2 spit, not anything. And it's more though than the fact that
3 this DNA just does not exist because in the homicide, in the
4 December 12 robbery that led to the death of this individual,
5 there was DNA recovered from the car. The car, you will learn,
6 where the body was found, and from the windows and from various
7 different places inside the car, DNA was recovered. Samples
8 were taken. They were sent to a lab, and it was negative for
9 Mr. Dore. He was affirmatively not the person who left the DNA
10 in the car. So that lack of evidence is very compelling.

11 So no victim identifications, no fingerprints, no DNA.
12 All of these things are a lack of evidence that you should
13 consider. And I just want to jump back a second to the cell
14 phone because this is a case very much about the cell phone.

15 The government is going to present times and places of
16 robberies and then maps of cell towers, and say that Mr. Dore
17 was using these cell towers, but wait until you have heard all
18 of the evidence about the cell towers and you see all of these
19 maps because the maps that the government will present to you
20 as if they are a road map of these crimes occurring are not
21 nearly as clear and compelling as they want you to believe.
22 These towers were constantly in use by Mr. Dore and others,
23 towers in the same area, in different areas, were in use at
24 similar times. It doesn't demonstrate what the government
25 wants you to believe it demonstrates.

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Opening - Mr. Roth

1 They have to rely on that and the testimony of these
2 cooperating witnesses because there is a lack of real reliable
3 evidence of Mr. Dore's identification as the person that
4 committed these offenses.

5 I believe that at the end of this case, there will be
6 only one verdict that is supported by the evidence, and that is
7 that Mr. Dore is not guilty of any of these offenses.

8 Thank you.

9 THE COURT: Thank you, Ms. Fontier.

10 Now we'll hear from Mr. Roth on behalf of Mr. Barrett.

11 MR. ROTH: Thank you, your Honor.

12 Good afternoon.

13 I can only imagine what you're thinking here as
14 jurors. What can Mr. Roth and my colleague, Mr. Murphy, do in
15 light of all this evidence that the government says it has?
16 What can we do to defend Mr. Barrett? What can we do to get an
17 acquittal? What can we do as jurors now except retire to the
18 jury room and, if we believe them, vote guilty?

19 Well, the judge told you before, told you
20 individually, he'll tell you again, that the starting point for
21 the inquiry that you have as fact finders -- you're the fact
22 finders; the judge is the person who presides and gives you the
23 law that you must follow -- is the presumption of innocence.
24 Despite what the government has said, and the judge told you
25 straight out, there's not a word of what they said that's

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Opening - Mr. Roth

1 actually evidence. So you have the presumption of innocence
2 and the starting point is very simple. You all have to be able
3 to look across the room and look at Mr. Barrett in the eye and
4 say I presume you to be innocent. That's the starting point.
5 And that stays with him throughout the entire trial and goes
6 with him right into the jury room itself.

7 So how did this case get to federal court? The
8 government alluded to it a little. There was a rash of violent
9 robberies in Westchester and the NYPD couldn't solve them.
10 There came a time when there was a homicide involved, in the
11 course of an illegal cigarette transaction. The state called
12 in the feds. When you call in the feds, it's like calling in
13 the cavalry. They have all those resources. Some of you have
14 seen those shows, the CSIs, all that comes in with the ATF.
15 All that technology.

16 But at the end of the day, and my colleague alluded to
17 it, what did it produce? What hard evidence did it produce
18 that Mr. Barrett is guilty of these crimes? And, by the way,
19 when you review the evidence, I ask you to remember that
20 there's two trials here within the one trial. Each defendant,
21 Mr. Dore and Mr. Barrett, deserves their separate attention and
22 you each are going to be asked to vote on verdicts with respect
23 to each of their guilt or innocence.

24 You've already heard that they're going to try to
25 convict him on cell site evidence, supposed sightings. We will

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Opening - Mr. Roth

1 hear about this Mercedes-Benz that he was observed in. The
2 Mercedes-Benz is the car of his baby's mother. They're trying
3 to convict him on the association with some other people, and
4 the word, I think, the government used was "cooperator" to
5 refer to Patrick Taylor. Or witness, they referred to him as a
6 witness. My colleague referred to him as a cooperator.
7 There's other names, which we'll get to, that he can be
8 referred to in the course of this trial, and I'll tell you why.

9 They also rely on the word of Janiel Brown, this
10 disgruntled girlfriend, who was subpoenaed into this courthouse
11 and under the threat of compulsion and under the threat of
12 going to jail for the rest of her life, and the threat of
13 sitting in this chair, agreed to testify against Mr. Dore and
14 Mr. Barrett. But, again, where is the hard proof? There is no
15 written confession by Mr. Barrett. There's no oral confession
16 by Mr. Barrett. There's no video confession by Mr. Barrett.

17 Cell site evidence, as you've heard, only tends to
18 prove where a person associated with a phone, what cell tower
19 that phone used. Nothing more. It's not like a wiretap. A
20 wiretap, when two people are talking, you can listen in, in
21 essentially real time, to what's happened, what's transpiring,
22 what one person's saying to the other person.

23 I concur with my colleague. These are very heinous
24 crimes, reprehensible. Nobody condones these crimes. That's
25 not what you're here for, to pass judgment on the crimes. To

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Opening - Mr. Roth

1 say that they've been committed, you will hear testimony and
2 there will be cross-examination. There may certainly be some
3 questions and issues as to how a particular crime occurred.
4 But we don't deny that the crime itself occurred. The judge
5 has told you before that the burden of proof here is the proof
6 of guilt beyond a reasonable doubt.

7 I'm sure many of you have sat on civil cases before.
8 It's a different burden of proof than in a civil case. In a
9 civil case, what you're talking about is monetary damages.
10 There's a car accident. One person hits the other person and
11 there may be injuries, and you're fighting over how much money
12 one party, the plaintiff or the defendant, is going to get.
13 And the burden of proof in that is by a preponderance greater
14 than 50 percent of the proof, to win the case.

15 Well, you've heard from the government. You've heard
16 from the judge that the stakes here are much higher. Couldn't
17 be higher. Somebody lost their life in the murder, and two
18 gentlemen's lives are on the line here now. So the scales of
19 justice just don't require proof a little bit over 50 percent
20 of the preponderance. It's proof beyond a reasonable doubt.

21 There's not one robbery victim of however many they
22 bring in here who is going to take the witness stand, swear
23 under oath, point a finger at Mr. Barrett and say, That's the
24 man that robbed me. It's not going to happen because there's
25 no credible proof that they did. Who is going to put a gun in

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Opening – Mr. Roth

1 his hand? Not a victim. Who is going to put a knife in his
2 hand? Not a victim. The only persons who could possibly try
3 to put a gun in the hand or will try to put a gun in his hand
4 in exchange for their bid for freedom and leniency from this
5 Court, will be cooperator Patrick Taylor. He's also known as
6 Squeak or Spooky. And maybe Janiel Brown. And Janiel Brown,
7 if you believe anything that she has to say, she's up to her
8 eyeballs in this crime. And you'll hear that she made a deal.

9 She made a deal with the government, this government
10 that's prosecuting this case, for a total walk. She was facing
11 potentially life imprisonment. She made a deal. She testified
12 and she could come out scot-free. Forget no jail for life, but
13 no imprisonment and no record.

When you look for what we call proof that the government has, the government was talking about Mr. Barrett was divvying up the proceeds of the crime, the fruits of the crime. Well, you listen to the record and see what, if any, evidence there is, whatsoever, of what we call unexplained wealth in this case, whether there's jewelry found on his person or in the search of his home when he's arrested from the alleged robberies. The only thing that's found is \$1,500 in the home of his girlfriend, who is a working woman, Ms. Felicia Lake.

(Continued on next page)

D355dor3

Opening - Mr. Roth

1 MR. ROTH: Now Mr. Barrett is a tall man. There is
2 some testimony on the street of being nicknamed the giant. He
3 is 6'7" or taller. That's, in basketball terms, that's not a
4 point guard, that's a power forward or beyond. He is a big
5 man. And I submit to you that despite what the government says
6 that the robbers were wearing masks, if this man -- I will ask
7 you to stand for just a sec -- if this man was robbing you, he
8 would have a presence over you, his voice would be booming over
9 you and you would feel him in your presence.

10 There is no witness except perhaps Spooky or Squeak
11 who could come in here because he knows that there is missing
12 evidence in the government's case that would put him at a
13 robbery scene.

14 And by the way, the government, they're very
15 intelligent, experienced prosecutors. This case was set for
16 this trial date a long, long time ago. They analyzed their
17 case, they built their case, and a month ago when they realized
18 that they didn't have solid evidence against Mr. Barrett they
19 signed up Patrick Taylor as a cooperator. Patrick Taylor is a
20 cooperator because they needed him. Then what happened? When
21 they knew his testimony still wasn't filling in all the holes
22 in exchange for promises of leniency, then they signed up his
23 ex-girlfriend just this month. Just within the last week they
24 made that deal with her, they basically gave her the court
25 house to come in here and try to help convict Mr. Dore.

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Opening - Mr. Roth

If the government's premise in part is why Mr. Barrett can't be ID'd by these victims is that he was driving the getaway car. Well, if people were running out of the car that he was driving -- and by the way, that Mercedes Benz is not his car, the car is Ms. Lake's car. It is registered to Ms. Lake, there is no crime in a working woman buying a used Mercedes. And I say in that car there is no crime that he gave rise to, for instance, Mr. Dore, the association is nothing criminal.

The testimony will also show that Ms. Lake did not give him the exclusive use of that Mercedes Benz, that she lent it to other men.

You can't convict a car. But they're saying he's only just the wheel man, that's why nobody can see him. But if people are going out of that car, coming back with robbery proceeds, driving around casing the joint, why aren't there fingerprints in that car? Why isn't there DNA in that car? They went through that entire car. Now, conveniently maybe they'll have a cooperator come in here, Taylor or Janiel and say, oh, they wiped that car down. They know they watch CSI, they must have wiped that car down to get rid of everything.

Well, listen to the facts when it comes to the murder where there is a homicide in a van and ask if the people -- and I defy you after the case is over -- to prove beyond a reasonable doubt who shot that unfortunate man in that van. But listen to the evidence from crime scene about the search of

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Opening - Mr. Roth

1 that van and see if the way that van was left is consistent
2 with people who wipe down cars for prints. Because in that
3 van, we know that now, crime scene got there and found a dead
4 body; there is money secreted in various parts of the van. A
5 lot of money the robbers obviously didn't take. There is a
6 shell casings. Everybody knows you pick up your shell casings
7 after you commit a crime. But the people who perpetuated that
8 murder and robbery did not do that.

9 I want to touch on a piece of evidence that is
10 significant, will be important that the government did not
11 touch on and that's a rap video that you will see and it is a
12 video that the government is going to play that shows
13 Mr. Barrett in the Mercedes in question -- not his, Ms. Lake's
14 Mercedes -- and at least two other people in the car who are
15 supposedly part of this robbery crew. And you will see in that
16 video, very distinctly, that they put on masks, they apparently
17 are wearing gloves, and it looks like they're loading guns and
18 then they get out of the car, they follow somebody in, it looks
19 like they're robbing somebody. They take a bag from somebody,
20 throw it down and run into the car. There is music and
21 everything else to that.

22 The government is going to ask you to draw certain
23 assumptions from that video as they are going to ask you to
24 draw certain assumptions from a lot of facts in this case.

25 Now, it is true that if you didn't see this video in

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1 the context like you'll see it here on the screen with the
2 overlay and it is a produced video, rap video, and you were
3 just driving by, it is fair to say that you would look like
4 somebody's committing a robbery. But, it will be clear to you
5 after you see it that it was nothing more than a rap video.

6 And another thing that's illustration from that piece
7 of evidence and how you have to evaluate evidence, it is your
8 responsibility, if you look at that video you'll be able to see
9 what looks like real -- two real automatic weapons -- looks
10 like to you, as laypeople, because whatever you have seen from
11 jury or even if you have seen some guns.

12 But the bottom line is if you were asked to convict on
13 proof beyond a reasonable doubt whether the weapons in that
14 video were real or not, you couldn't do it because it's
15 impossible to tell despite the fact that it looks like they're
16 real weapons.

17 Mr. Barrett is not denying that he knew some of the
18 people that you'll hear testimony about including a fellow
19 named Taget Todd who was in that video. In fact, he knows
20 Spooky or Spook, the cooperator. He knows him because Spook,
21 as you have heard from my colleague, is a pot dealer. Big pot
22 dealer. Not small-time pot dealer but sold hundreds of pounds,
23 kilos, hundreds of kilos over the course of his life. Over a
24 thousand kilos. And he used to sell Mr. Barrett liked pot and
25 there is a house you will hear in Mount Vernon a so-called

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1 party house, people hung around, listened to music and smoked
2 joints and Mr. Barrett had a relationship with him and from
3 time to time would buy some pot from him.

4 He knows Hussain from the store but association is not
5 a crime. You are going to hear about this man Fahd Hussain or
6 Moe. He operated a store but it was really a true den of
7 iniquity. People came into his store as customers or suppliers
8 and it is true they came out as victims. But Spooky was part
9 of that web of criminals and Mr. Barrett was not. There is no
10 honor, you will hear, amongst Hussain and the people that he
11 dealt with. There was another fellow here who you are going to
12 hear a lot of testimony about, Mr. Singh, who operated a little
13 jewelry kiosk in that store who is up to his eyeballs with
14 Hussain. Hussain, who is married, four kids, had a child with
15 Singh's sister and then set up his brother-in-law to be robbed.

16 My point is he, Spooky, they're only interested in
17 self-dealing and getting ahead for themselves and nothing short
18 of that.

19 Speaking of Spooky, you are going to hear that he made
20 a deal with the government. It is all going to come out. And,
21 you know, some people think it is impolite to call a cooperator
22 a rat. Actually, in some ways it is a compliment and the
23 reason that cooperators became known as rats in some ways is
24 because they are like rats in terms of survival. You can try
25 to kill them, you can try to use all different types of means,

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1 but they know how to hustle and get over. And that's exactly
2 what Mr. Taylor did in this case. He was face mandatory prison
3 time on this case. He was facing a maximum of life
4 imprisonment. Instead, he made a deal with the government in
5 hope of getting leniency from this court in exchange for his
6 testimony.

7 You are going to hear testimony from police witnesses
8 and special agents. They just asked you during the voir dire
9 can you accept police testimony. We know -- and not hold it to
10 either different standard either for, favor it or be prejudiced
11 it against it. All I am asking you is that when a police
12 officer testifies that that badge does not become a badge of
13 truth and ask yourself when the police officer takes the
14 witness stand, does he have any professional reason to tailor
15 or color or shade his testimony in this case whether it be for
16 promotion or otherwise? Ask yourself whether he has any
17 personal relationship with the parties that would get him to
18 shade or color his testimony.

19 And the same thing is true with the special agents and
20 that's what they're called. You don't make their testimony any
21 more special than any other civilian witness that you hear.

22 The civilian witnesses, again, ask yourself, whether
23 they, when they take the witness stand, have any particular
24 motive to falsify or color their testimony in a certain way.
25 You are going to hear testimony that many of the civilians were

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1 involved in criminal acts themselves and now they're called
2 upon and asked to testify for the government. Ask yourself
3 whether they might color their testimony in such a way to curry
4 favor with the government.

5 At the end of the day the Judge told you that you are
6 the fact finders alone. You will determine whether or not a
7 witness is lying and the judge will tell you if you determine
8 that a witness lied about a material fact that you can
9 disregard that portion of the witness' testimony or the entire
10 testimony of that witness. Just like if you had lunch today at
11 the restaurant and you got some vegetable soup and there is
12 some rotten vegetables in it. You'll have to pick out the
13 vegetables and eat the soup or throw the whole thing away. And
14 that's what you can do with the testimony of any witness you
15 find falsely testified about something.

16 You have heard that the defense has no burden of proof
17 and it is easy to say these words because we're lawyers and the
18 Judge has said them before and he is reading off of his sheet,
19 but you're the ones that have to breathe life into it. Many of
20 you may be sitting there saying if I was in that hot seat with
21 Mr. Barrett and I was falsely accused I would be jumping up and
22 testifying and proclaiming my innocence. But a courtroom, as
23 Judge Sullivan emphasized time and time again, is a different
24 set of rules. It is not like a presidential debate where you
25 get to hear one side and you get to hear another side and you

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1 get to make a decision. You will hear. The fact that we may
2 not call a witness or we may not call Mr. Barrett to the stand,
3 the Judge will tell you you can't hold that against him, you
4 can't draw a negative inference, but our defense may be
5 contained in the proof or the lack of proof, the answers to the
6 questions that I asked on cross-examination.

7 This is the only time that I'm going to get to address
8 you directly until I stand up at the end and we do our
9 summations, and at that time I'm confident that when I do
10 address you again during summations, I will ask you to return
11 the only verdict that will be consistent with the evidence, and
12 that's a verdict of not guilty.

13 Thank you.

14 THE COURT: All right. Thank you, Mr. Roth.

15 We are now going to begin the testimony. Okay?
16 Mr. Ferguson, are you okay?

17 A JUROR: Yes.

18 THE COURT: Does anybody need a break or can we roll
19 right into the testimony?

20 Let's do that then. Government, your first witness.

21 MS. MASELLA: Your Honor, the government calls Jesse
22 Singh.

23 JASPAL SINGH,

24 called as a witness by the Government,

25 having been duly sworn, testified as follows:

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1 THE WITNESS: Jaspal, J-A-S-P-A-L, Singh.

2 THE COURT: You may proceed, Ms. Masella.

3 MS. MASELLA: Thank you, your Honor.

4 DIRECT EXAMINATION

5 BY MS. MASELLA:

6 Q. Good afternoon, Mr. Singh.

7 In addition to your given first name do you use any
8 nicknames?

9 A. Jesse.

10 Q. Jesse?

11 A. Yes.

12 Q. Mr. Singh, how are you employed currently?

13 A. I work part-time right now.

14 Q. What kind of work do you do part-time?

15 A. I'm managing a gas station.

16 Q. Where is the gas station that you manage?

17 A. 30 Mount Vernon Avenue.

18 Q. What city is that in, sir?

19 A. That's in Mount Vernon, Westchester.

20 Q. How long have you been working at 30 Mount Vernon Avenue at
21 the gas station?

22 A. Two years.

23 Q. And what did you do before that?

24 A. I also managing the gas station in the Bronx.

25 Q. Where is that gas station located?

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J. Singh - direct

1 A. 2947 Jerome Avenue, Bronx.

2 Q. Is there some relationship between the gas station in the
3 Bronx and the gas station in Mount Vernon?

4 A. Yes. The same owner.

5 Q. For how long, approximately going back, have you been
6 working for the same owner managing these two gas stations?

7 A. About 17 years.

8 Q. Now, focusing on the Mount Vernon gas station for a moment,
9 what is the name of that business?

10 A. Mount Vernon?

11 Q. Yes.

12 A. Mount Vernon Service Center.

13 Q. And what kind of business is it?

14 A. Gas station, repair shop and a C store -- convenience
15 store.

16 Q. What kind of products, in addition to gas, are sold at the
17 service station and the convenience store?

18 A. Cigarettes, candy, soda, small merchandise.

19 Q. For that gas station in Mount Vernon, where are the gas
20 suppliers located?

21 A. New York and New Jersey.

22 Q. What portion of the business from that gas station is cash
23 proceeds as opposed to credit cards or debit card proceeds?

24 A. About 60 and 40.

25 Q. Which is 60 and which is 40?

D355dor3

J. Singh - direct

1 A. 60 cash and 40 credit.

2 Q. Can you describe for the jury how the cash proceeds of the
3 Mount Vernon gas station are generally handled?

4 A. Twice a week we take all the cash and bring it to the other
5 location --

6 MR. ROTH: Judge, I would just ask that he testify in
7 the first person.

8 THE COURT: We as opposed to?

9 MR. ROTH: I.

10 THE COURT: Well, were there other people who work at
11 the store?

12 THE WITNESS: Yes.

13 THE COURT: How many other people?

14 THE WITNESS: Three people.

15 THE COURT: All right. So, what is the question?

16 BY MS. MASELLA:

17 Q. Mr. Singh, what role do you have with respect to handling
18 the cash proceeds of the Mount Vernon service station?

19 A. I pick up the cash to drop off to the other station.
20 That's it.

21 Q. The other station in the Bronx?

22 A. Yes.

23 Q. How many times per week do you do that?

24 A. Two times.

25 Q. And how much cash do you typically carry on one of these

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J. Singh - direct

1 trips?

2 A. About \$25,000 to \$30,000.

3 Q. And what happens to the cash after you bring it to the
4 Bronx service station?

5 A. They pick it up from there, they take it to the office and
6 count it and take it to the bank.

7 Q. Mr. Singh, did there ever come a time when you called
8 police officers in connection with your business at the Mount
9 Vernon Service Center?

10 A. I'm sorry?

11 Q. Did there come a time when you called police officers in
12 connection with your business at the Mount Vernon Service
13 Center?

14 A. Yeah.

15 I pick up the cash, I was going to the Bronx location.
16 As soon I left from there I see the black Mercedes behind me
17 and I make a left turn, they was behind me, and I stop at the
18 light and they stopped behind me like 200 feet, like they were
19 coming too close. And the second traffic light they did the
20 same thing, they parked to the, like right side -- you know,
21 they pulled to the right side as soon as I stop at the light.
22 Third traffic light they did the same thing. And then I take
23 the highway from there and they was behind me on the highway.
24 Then I got off at the next exit and I make a right turn and
25 they were behind me. Then other traffic light I make a left

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J. Singh - direct

1 turn, the Mercedes car still behind me, then I panicked and I
2 call the police at that time.

3 Q. Let me back you up for a second, Mr. Singh.

4 First of all, can you tell us when this was, what
5 month and year that you are describing?

6 A. In November 2011.

7 Q. Approximately what time of day?

8 A. About 10:30, 11:00.

9 Q. In what area geographically were you when you first noticed
10 this Mercedes?

11 A. As soon I left from the station and about three, four, five
12 blocks up I noticed that.

13 Q. At that time were you able to see anything about the
14 occupants of the Mercedes?

15 A. Soon I make a left turn I thought it was regular car coming
16 behind me and as soon I stop at the first traffic light and
17 they pulled to the right corner and they park and then I more
18 careful, you know? And after that I, every time I stop they
19 were doing same thing so I feel suspicious a little bit. And
20 then after that I take the highway and then I call the police,
21 you know, after.

22 Q. Did you notice what type of Mercedes it was?

23 A. It was a black Mercedes.

24 Q. Do you know anything about the model of the car, the type
25 of car?

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J. Singh - direct

1 A. It looks like S class 430 or 500.

2 Q. How long, approximately, would you say that you noticed
3 this car behind you?

4 A. How long? When it takes me about 15 to 20 minutes to get
5 to that station and soon I left the station I notice that that
6 car was behind me and I was about 15 blocks from -- to reaching
7 that gas station and then I called the police when they were
8 still behind me.

9 Q. And when you say you called the police, who in particular
10 did you call?

11 A. I called Carlos V --

12 THE COURT: Do you know how to spell it?

13 THE WITNESS: No, I don't know.

14 Q. Are you -- do you personally know that officer, sir?

15 A. Yes.

16 Q. How is it that you know him?

17 A. I like at the gas station, the Bronx location 15 years and
18 I do repair work, tire repair work for police cars at that
19 location.

20 Q. And is that officer one of the officers who got car repairs
21 at your Bronx location?

22 A. Yes.

23 Q. When you called him did you actually speak with him on the
24 phone?

25 A. When?

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J. Singh - direct

1 Q. When you called the police officer, did you actually make
2 contact and speak with him on the phone?

3 A. Yes. I called first time, he didn't pick up the phone; I
4 called back again and then he pick up the phone.

5 Q. After speaking with that police officer, what did you do
6 next?

7 A. After I speak to him and he tell me where they are located
8 and then I call also my gas station or my cousin's brother, he
9 is supposed to pick up the money, and I call them, I said there
10 was a Mercedes car behind me and then I say I am not going to
11 go to the gas station. And when I reach to the gas station I
12 make a right turn and the police officer was from there about
13 five blocks away and they was waiting for me, you know, to get
14 there.

15 Q. Where was the police officer located, in what area?

16 A. Jerome and Moshulu Parkway.

17 Q. What did you do when you got to the area of Jerome Avenue
18 and Moshulu Parkway?

19 A. I stop, and I think when they stopped the Mercedes car and
20 then they tell me to leave.

21 Q. Did you observe the Mercedes car stop in that area?

22 A. Yes. I look.

23 Q. At that time did you observe anything about the occupants
24 of the car?

25 Did you observe anything about the occupants of the

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J. Singh - direct

1 Mercedes when it stopped?

2 A. I don't understand what you mean occupants.

3 Q. I will rephrase, sir.

4 Did you see any of the -- any people get out of the
5 Mercedes?

6 A. Yes. The driver, I saw him when he coming out. As soon
7 they tell me to leave I look back and I saw the driver coming
8 out from the car.

9 Q. And could you describe for us what the driver looked like?

10 A. He was tall, male, black male, you know.

11 Q. Can you approximate how tall he was?

12 A. I would say about six, 6 and a half feet. Six and half.

13 Q. Six and a half feet?

14 A. Yeah.

15 MS. MASELLA: One moment, your Honor.

16 (Pause)

17 MS. MASELLA: Your Honor, no further questions for
18 Mr. Singh at this time.

19 THE COURT: All right.

20 Cross-examination. Mr. Roth, you are going to go
21 first?

22 MR. ROTH: Thank you.

23 THE COURT: Okay.

24 CROSS EXAMINATION

25 BY MR. ROTH:

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J. Singh - cross

1 Q. Good afternoon, Mr. Singh.

2 A. Good afternoon.

3 Q. If there is any question that I ask you that you don't
4 understand, please just ask me to rephrase it before you answer
5 that question. Okay?

6 A. Sure.

7 Q. You indicated, sir, that you know the police officer that
8 you called on the telephone that day in November?

9 A. Who I call?

10 Q. Yes.

11 A. Yes.

12 Q. And you know him -- you may not know how to spell or
13 pronounce his last name but you know him as Carlos; is that
14 fair to say?

15 A. Yes.

16 Q. And you indicated that you know Carlos from Carlos coming
17 in the shop; is that right?

18 A. Yes.

19 Q. And the police fleet where their cars get serviced there;
20 is that correct?

21 A. Yes.

22 Q. Is that the extent of your relationship with Carlos? In
23 other words, do you know him more than from him coming in the
24 shop?

25 A. Yes. He come into the shop and then we, after that, yes,

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J. Singh - cross

1 we go to the retirement parties, I meet them a couple times.

2 Q. You meet Carlos? You go out with him socially?

3 A. Not socially, but I go out with him for sometimes dinner,
4 yes.

5 Q. Oh.

6 So how many times do you go out to dinner with Carlos,
7 this police officer?

8 A. How many times like in a week or how many times in a year?

9 Q. We can start with a week and then we will work our way up.

10 A. No, not a week, maybe a couple times a year. You know?

11 Q. Okay. And what occasions are these? You said retirement
12 parties for other police officers?

13 A. Yes.

14 Q. And he invites you?

15 A. Yeah. They invite me because they all coming to me for
16 repair of fleet cars, you know?

17 Q. Do you have to pay for that ticket or do they pay for your
18 ticket?

19 A. For?

20 Q. For the ticket for the retirement parties?

21 A. Like if they everybody chip in, then I have to pay.

22 Q. Who else is chipping in?

23 A. All police officers.

24 Q. So you chip in just like another police officer chips in?

25 A. Like, yes. They invite everybody, you know, all their

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J. Singh - cross

1 friends.

2 Q. But you have to pay your way?

3 A. Yes.

4 Q. Sometimes does he pay for you when you go out?

5 A. No.

6 Q. And that's -- part of the reason for that is because you
7 say you have a business relationship with him, is that right?

8 A. Not a business relationship. I mean, they just know me
9 because they come in to do repairs with me sometimes.

10 Q. You are friends with him, is that fair to say, with Carlos?

11 A. Yes.

12 Q. Other than retirement parties, do you go out to have dinner
13 with him on occasions?

14 A. Not really.

15 Q. Well --

16 A. Some, yeah.

17 Q. Help us: Not really?

18 A. Sometimes like I say, yes, I go one or two times, you know?

19 Q. And is that with your wife or his wife or just with other
20 guys?

21 A. Other guys.

22 Q. And where do you go when you go?

23 A. We go to the local restaurant.

24 Q. Which is what? Which restaurant is that?

25 A. Local restaurant, any restaurant in the Bronx, you know.

D355dor3

J. Singh - cross

1 Q. What is the last one you went to with him?

2 A. Last I went to, I think in New Rochelle. In New Rochelle.

3 Q. And what was the name of that New Rochelle restaurant?

4 A. I forgot the name of the restaurant.

5 Q. And the last time you went out to dinner with him on a
6 social occasion, who paid the bill that time? That wasn't a
7 retirement party, right?

8 A. Everybody chipped in.

9 Q. Everybody chips in.

10 Now, you said there is no professional relationship.

11 Do you also service the car of -- the Police Officer Carlos'
12 personal car?

13 A. Yes.

14 Q. Oh, he brings that into your shop?

15 A. Yes.

16 Q. And how many times -- what kind of car does he have;
17 Carlos?

18 A. He have a Ford exhibition.

19 Q. And how many times do you service that car for him?

20 A. Every time he need a New York State inspection and he bring
21 it in I do the state inspection.

22 Q. What about repairs?

23 A. Our repair, if you need minor oil change, like that stuff,
24 we do there.

25 Q. And do you give him any special break?

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J. Singh - cross

1 A. No. Same price he pays.

2 Q. And does he give you a PBA card?

3 A. No.

4 Q. You never got a PBA card from him?

5 A. PBA card, yes. Sometimes he give me once a year.

6 Q. Once a year. Okay.

7 And what is your understanding, sir, of what you can
8 do with that PBA card?

9 A. I don't know. He just give it to me, you know?

10 Q. Do you keep it in your wallet?

11 A. Yeah.

12 Q. Do you have it in your wallet today?

13 A. Yes.

14 Q. Why do you keep it in your wallet?

15 A. Because he give it to him.

16 Q. Well, he can give you lots of things, you don't keep it in
17 your wallet?

18 THE COURT: Is that a question?

19 MR. ROTH: I apologize, your Honor. I will withdraw
20 that.

21 Q. Is it your understanding, sir, that if you get stopped by
22 police officers you can show that PBA card?

23 A. I don't know.

24 Q. Is that PBA card, does that have his shield on it?

25 A. I didn't check. I didn't know.

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J. Singh - cross

1 Q. Do you have -- could you take it out now?

2 A. I don't have the card now.

3 Q. Do you have your wallet with you?

4 A. Yes.

5 Q. Now, have you ever been robbed before?

6 A. Never.

7 Q. But you make these cash hauls all the time, is that
8 correct?

9 A. Yes.

10 Q. Anyone else in your gas station been robbed before?

11 A. Never.

12 Q. You carry \$25,000 or more in cash; is that right?

13 A. Yes.

14 Q. That's a lot of cash, right?

15 A. Yes.

16 Q. Is it fair to say that's the only time that you carry that
17 kind of cash around?

18 A. Only?

19 Q. Time. You don't personally carry around \$25,000?

20 A. No. Never.

21 Q. So, I assume you sort of are very careful when you are
22 carrying that cash around?

23 A. Yes.

24 Q. And you are fearful of possibly being robbed I guess; is
25 that fair to say?

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J. Singh - cross

1 A. Yes. I am very careful when I have the cash on me.

2 Q. So you always are looking around to see if there is
3 anything suspicious; that's what you are looking for, right?

4 A. Yes.

5 Q. And tell me where this Mercedes was the first time that you
6 saw it that day.

7 A. That was on Mount Vernon Avenue and Bronx River Road.

8 Q. How many cars were between the Mercedes and yourself when
9 you first saw it?

10 A. Right behind me.

11 Q. Right behind you.

12 And you came to a light and then what happened?

13 A. I stop at the light and that car is supposed to be stopped
14 right behind me. It didn't stop right behind me, it stopped
15 like 200 feet. You see the empty spot on the side, they pull
16 right there. You know?

17 Q. Was there a car in front of you at this time?

18 A. At this time, no.

19 Q. And then did another car come behind you after the Mercedes
20 pulled over?

21 A. No. No.

22 Q. And then this went on for a period of time?

23 A. Three lights.

24 Q. And that's when you called Carlos, is that right?

25 A. No. I crossed the three lights and then I take the highway

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J. Singh - cross

1 and I take the highway and I still see the Mercedes car behind
2 me and that's like less than a mile. Next I got out after off
3 and there was a traffic light, and I make a right turn there
4 and then there is other traffic light when I make a right. I
5 make a left turn and when I make a left turn the car was still
6 behind me and then I called Carlos.

7 Q. And how did you call him? Did you have a --

8 A. Cell phone.

9 Q. Cell phone. You just dialed the cell phone in the car?

10 A. Yes.

11 Q. How many other cars at that point were between you and the
12 Mercedes?

13 A. They were right behind me.

14 Q. The whole time he was right behind you?

15 A. Yes.

16 Q. In other car?

17 A. On the highway they were speeding behind me. As soon as I
18 change the line they were changing the line.

19 Q. And do you recall the actual date that this happened, sir?

20 A. November -- that was a Monday -- I think it was 14, 2011.

21 Q. November 14th. How do you remember that day?

22 A. I remember that day, yes.

23 Q. My question, sir, is how do you remember now, some years
24 later, that date, November 14th, 2000?

25 A. I still remember because that's shocking for me. That day

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J. Singh - cross

1 I still remember.

2 Q. That date, November 14th, stayed in your head?

3 A. Yes.

4 Q. Well, let me ask you this, sir.

5 Do you recall sometime after the incident getting a
6 telephone call from a detective, Detective Kruse -- Dennis
7 Kruse -- concerning the incident?

8 A. Yes. A couple weeks later.

9 Q. And he asked you about the incident what happened that day;
10 is that fair to say?

11 A. Yes.

12 Q. And he asked you could that have been on the -- do you
13 recall exactly when that was? Could it have been in December
14 about a month later, December 14th, that he called you,
15 Detective Kruse?

16 A. Couple weeks later, yes, he called me, but I'm not sure if
17 it is December. I'm not sure.

18 Q. Okay.

19 And, do you recall him asking you when the event
20 happened, when this happened?

21 A. Yeah. He asked me --

22 Q. That's the one question. Do you recall him asking you when
23 this occurred, the car was following you, supposedly?

24 A. He called me -- I'm sorry. Say that again.

25 Q. He called you --

D355dor3

J. Singh - cross

1 A. Yes.

2 Q. -- to ask you questions about this event.

3 A. Yes.

4 Q. And he asked you during that conversation when did the
5 event happen. Do you recall that?

6 A. Yes.

7 Q. And, do you recall telling Detective Kruse that it happened
8 November 28th, 2011, not November 14th, 2011?

9 A. I don't remember saying that.

10 Q. Is it possible that you said that?

11 A. I don't remember. No.

12 Q. You were interviewed in this case by the prosecutors who
13 are seated at the table, Ms. Lester. Do you recall that?

14 A. Yes.

15 Q. And that was her office, is that right?

16 A. Yes.

17 Q. And that was just the end of January, is that correct, of
18 this year?

19 A. Yes.

20 Q. And at that time do you recall she asked you to describe
21 the driver of that Mercedes that day?

22 A. Yes.

23 Q. And, do you recall she asked you to describe the height of
24 the driver?

25 A. Yes.

D355dor3

J. Singh - cross

1 Q. And do you recall saying, in response to her question, he
2 was over six feet?

3 A. Yeah. Over six feet, yes.

4 Q. But you never said 6'5", is that correct?

5 A. I don't remember. I think it was over six feet, yes.

6 Q. But my question is do you ever recall telling Ms. Lester
7 that he was over 6'5" or six feet and a half?

8 A. Maybe. Yeah.

9 Q. Maybe? You're not so sure?

10 A. I mean it is over six feet; six and a half or seven. It
11 was tall.

12 Q. Seven feet?

13 A. Six and a half. About that height, yes.

14 Q. So, is it your testimony now that you believe you may have
15 told her that he was seven feet?

16 A. Over six feet.

17 Q. Over six feet. That's your best recollection?

18 A. Yes.

19 Q. You never said specifically 6'5"?

20 A. No.

21 MR. ROTH: I have no further questions.

22 THE COURT: Ms. Fontier or Ms. Stafford?

23 MS. STAFFORD: No question.

24 THE COURT: No questions.

25 Any redirect?

D355dor3

J. Singh - cross

1 MS. MASELLA: No, your Honor.

2 THE COURT: Mr. Singh, you may step down. Thank you.

3 (Witness steps down)

4 THE COURT: Next witness.

5 MS. MASELLA: Your Honor, the government calls Carlos
6 Villanueva.

7 CARLOS VILLANUEVA,

8 called as a witness by the Government,

9 having been duly sworn, testified as follows:

10 THE COURT: Mr. Villanueva, if you could move up a
11 little closer to the microphone and then slow down a tad when
12 you talk. You're a New Yorker, we all talk fast but my court
13 reporter, who is great, only has 10 fingers.

14 Okay, Ms. Masella, you may proceed.

15 MS. MASELLA: Thank you, your Honor.

16 DIRECT EXAMINATION

17 BY MS. MASELLA:

18 Q. Good afternoon, sir.

19 A. Good afternoon.

20 Q. How are you employed?

21 A. By the New York City Police Department.

22 Q. And what is your title with the New York City Police
23 Department?

24 A. Police officer.

25 Q. Is that also known as NYPD, by the way?

D355dor3

Villanueva - direct

1 A. Yes, ma'am.

2 Q. How long have you been a police officer with the NYPD?

3 A. 19 years.

4 Q. In what area have you been assigned during your 19 years as
5 a police officer?

6 A. The 52nd Precinct in the Bronx.

7 Q. Can you describe for the jury what area the 52nd Precinct
8 in the Bronx covers?

9 A. It covers from Fordham Road in the Bronx up to areas of
10 East 233rd Street and from Webster Avenue pretty much to Jerome
11 Avenue.

12 Q. What are your current duties as a police officer in the
13 52nd Precinct?

14 A. I currently work in the school unit.

15 Q. What do you do as a member of the school unit?

16 A. Basically we try to deter any activities that are going on
17 around outside the school, pick up truants and try to prevent
18 gang assaults usually outside of dismissals around schools.

19 Q. Approximately how long have you been assigned to the school
20 unit in the 52nd Precinct?

21 A. Almost 10 years.

22 Q. Officer Villanueva, do you know an individual named Jesse
23 Singh?

24 A. Yes, I do.

25 Q. How do you know that individual?

D355dor3

Villanueva - direct

1 A. He is a friend of mine and a business owner of a business
2 that is inside the confines of the 52nd Precinct.

3 Q. Which business is that?

4 A. It is a gas station. I think it had a few different names,
5 Sunoco, Citgo, located on Bedford and Jerome.

6 Q. Have you ever used that gas station for either gas or car
7 repairs personally?

8 A. Yes.

9 Q. When you say he is a friend of yours, can you generally
10 describe their friendship with him?

11 A. He has been in the area approximately, I think, 1996. We
12 also take the police cars to get fixed there for spare tires or
13 flat tires -- tire repair.

14 I have, off-duty, had dinner and socially spent time
15 with Jesse.

16 Q. Did there come a time when you received a phone call from
17 Jesse Singh in connection with your duties as a police officer?

18 A. Yes.

19 Q. When was that?

20 A. November of 2011.

21 Q. Do you remember the exact date in November?

22 A. November 14, 2011.

23 Q. Do you recall approximately what time you received this
24 phone call?

25 A. Sometime after 1:00 p.m.

D355dor3

Villanueva - direct

1 Q. In what area were you when you received that call?

2 A. I was actually on East 208th Street and Moshulu Parkway --
3 Moshulu Parkway North.

4 Q. Were you working at the time?

5 A. Yes, ma'am.

6 Q. Were you by yourself or were you with another police
7 officer?

8 A. I was with another police officer.

9 Q. Who was that?

10 A. Police Officer Luis Segarra.

11 Q. And what were you and Police Officer Segarra doing at that
12 time?

13 A. Basically we were going over a plan to just cover the
14 dismissal which we normally do every day. I was actually
15 talking with some of my other co-workers and my supervisor.

16 Q. And when you say dismissal, you are referring to school
17 dismissal?

18 A. Yes.

19 Q. Were you in a car or on foot at that time?

20 A. When I received the phone call I was on foot next to my
21 car.

22 Q. And after you -- when you received the phone call from
23 Jesse Singh, did you speak with him at that time?

24 A. Initially I got a phone call and I didn't pick up because I
25 was talking with my supervisor and my co-workers regarding our

D355dor3

Villanueva - direct

1 plan, and then shortly after I received another phone call and
2 it was a little unusual for Jesse to call me back right away
3 again after calling me and me not picking up the call.

4 Q. So, at that time did you speak with him?

5 A. Yes.

6 Q. Now, after you spoke with Jesse Singh on the telephone,
7 what did you do next?

8 A. After speaking with Jesse I basically, what he was telling
9 me on the phone I was -- I went into the street and I told him
10 to stay on the phone with me, he was giving me some information
11 regarding --

12 MR. ROTH: Objection to what he was saying.

13 THE COURT: I'm not sure that is necessarily hearsay
14 but -- well, what was the question.

15 Q. After speaking with Jesse Singh, what did you do next?

16 THE COURT: Let's be responsive to the question; what
17 did you do next?

18 A. We pulled over a vehicle.

19 Q. In what area did you pull over the vehicle?

20 A. East 208th Street and Jerome.

21 Q. Can you describe the vehicle that you pulled over?

22 A. It was a black Mercedes Benz.

23 Q. What type of Mercedes was it?

24 A. I'm not sure. It was definitely a four-door. I don't know
25 the exact numbers of the type of Mercedes Benz it was.

D355dor3

Villanueva - direct

1 Q. Do you remember whether it was a sedan or SUV-type car?

2 A. Definitely sedan.

3 Q. At the time you pulled over the Mercedes, did you see
4 Mr. Singh's car at that time?

5 A. Yes.

6 Q. Where was that?

7 A. He had actually went by me as I was talking to him on the
8 phone and he parked on East 208th Street and Jerome about,
9 maybe seven or eight car lengths behind me.

10 Q. Where was the Mercedes in relation to Mr. Singh's car when
11 you first saw those cars?

12 A. Approximately four or five car lengths behind Mr. Singh's
13 car.

14 Q. Were there any cars in between Mr. Singh's car and the
15 Mercedes?

16 A. Yes.

17 Q. Approximately how many cars?

18 A. Maybe two or three.

19 Q. Now, after you pulled over the Mercedes, what did you do
20 next?

21 A. I asked the driver to turn off the vehicle. After that I
22 asked the driver to step out of the vehicle. I asked the
23 driver for his credentials, driver's license, any paperwork for
24 the vehicle, and he presented me with the credentials of the
25 vehicle and his driver's license.

D355dor3

Villanueva - direct

1 Q. While you were -- how many occupants were there in the
2 Mercedes?

3 A. Two.

4 Q. And while you were speaking with the driver, what was
5 happening with respect to the passenger?

6 A. My partner was talking to the passenger.

7 Q. Now, you said that you asked the driver for his
8 credentials?

9 A. Yes.

10 Q. Did he provide them?

11 A. Yes.

12 Q. Specifically what did he provide?

13 A. If I recall correctly it was the driver's license and the
14 insurance card.

15 Q. And, did the driver's license appear to be in order?

16 A. Yes, ma'am.

17 Q. Do you recall the name of the driver?

18 A. Dwayne Barrett.

19 Q. And, do you recall what the driver or Mr. Barrett looked
20 like?

21 A. He is a male black, pretty tall, definitely over six feet,
22 6'2", 6'3", somewhere in that area. If I had to guess his
23 weight, somewhere around 230, 240 pounds.

24 Q. After he provided his driver's license and insurance card,
25 what did you do next?

D355dor3

Villanueva - direct

1 A. I asked him if he had anything in the car that he shouldn't
2 have, and he told me no.

3 Q. Did you ask him any questions after that?

4 A. I asked him if I could check the car and he told me yes.

5 Q. And by check the car, what did you mean by that?

6 A. Basically just check the inside of the car, the floor, the
7 seats, the back seats. And then after I checked that I asked
8 him can I check the trunk. He said yes. I asked him do you
9 have anything to hide? He said no.

10 Q. Can you describe what you did as you conducted a search of
11 the car and what, if anything, you noticed?

12 A. When I searched the car I did notice at least two cell
13 phones on the console of the front part of the car. I did
14 notice a car seat in the back seat. I noticed a pair of
15 sneakers in the back seat. I also noticed a female size, like
16 a medium size softball bat in the back.

17 Q. Can you describe the bat that you noticed in the back seat?

18 A. Basically it was aluminum from the contact part of the bat,
19 and if I recall correctly it was a royal bluish also besides
20 the aluminum part which is silver, and it was like a female
21 because usually the male bats are a little longer, the female
22 bats they're smaller and lighter. I play softball so I knew
23 that it was a female softball bat.

24 Q. Other than the cell phones and the bat that you're
25 describing, did you notice anything else either in the --

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Villanueva - direct

1 within the car or within the trunk area of the car?

2 A. When I checked the trunk there was a much smaller bat, like
3 one of those souvenir bats they give you at Yankee Stadium. I
4 did notice a do-rag -- a black do-rag and I did notice a black
5 winter type ski mask in the back in the trunk.

6 Q. Are you able to provide a description of the person who was
7 a passenger that day in the car?

8 A. I do remember him being a male black, thinner and shorter
9 than the driver. That's pretty much -- I had most of my
10 attention to the driver.

11 Q. Now, Officer Villanueva, when you were collecting
12 information from the driver, did you ask him for his telephone
13 number as well?

14 A. I think I did on the report that I filled out, I wrote that
15 information.

16 Q. Sitting here today, do you remember the telephone number
17 that he gave you?

18 A. Not by memory, no.

19 Q. When you refer to the report that you filled out, what
20 specifically are you talking about?

21 A. A UF-250 report, stop and frisk report.

22 Q. What is a UF-250 stop and frisk report?

23 A. It is usually a report that we complete when we stop
24 somebody and we ask them questions for any period or amount of
25 time regarding a possible crime being committed.

D355dor3

Villanueva - direct

1 MS. MASELLA: May I approach, your Honor?

2 THE COURT: You may.

3 Q. I'm showing the witness what has been marked for
4 identification as 3538-B.

5 MR. ROTH: May I object at this time? I think she
6 said that it was required to refresh his recollection. I don't
7 know what it is being offered for now.

8 THE COURT: It is not being offered, I don't think.
9 She is just showing it to him.

10 MR. ROTH: Okay.

11 THE COURT: Right? You are just showing it to the
12 witness?

13 MS. MASELLA: Correct, your Honor.

14 THE COURT: Okay.

15 BY MS. MASELLA:

16 Q. Officer, 3538-B which is the document marked in front of
17 you, what is that document?

18 A. That is the front part of the stop, question and frisk
19 report.

20 THE COURT: Say that again?

21 A. The stop, question and frisk report; the UF-250.

22 Q. And did you fill that out close in time to the point at
23 which you obtained the information from Mr. Barrett in
24 connection with the car stop?

25 THE WITNESS: Can I see it?

D355dor3

Villanueva - direct

1 THE COURT: Yes. You can look at it.

2 A. Yes. This is the one I filled out.

3 Q. And, did you fill it out at or around the time you
4 conducted the car stop?

5 A. Yes, ma'am.

6 Q. And when you filled it out were you taking care to be
7 accurate and careful in recording the information?

8 A. Absolutely.

9 MS. MASELLA: Your Honor, I would offer this as a
10 recorded recollection so that the witness could read a portion
11 of it into the record.

12 THE COURT: Any objection?

13 MR. ROTH: I have no objection, your Honor.

14 THE COURT: Okay. So, that's fine. You can -- you
15 are going to ask him to read a portion of the document to the
16 jury, correct?

17 MS. MASELLA: Correct, your Honor.

18 THE COURT: Go ahead.

19 BY MS. MASELLA:

20 Q. Officer Villanueva, if you are able to read the writing in
21 the area that indicates the phone number that Mr. Barrett gave
22 you, could you read that for the jury?

23 A. Yes. The number is 347-883-8414.

24 MS. MASELLA: One moment, your Honor.

25 (Pause)

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Villanueva - direct

1 MS. MASELLA: No further questions, your Honor.

2 THE COURT: Any cross-examination?

3 MR. ROTH: Yes, your Honor. Thank you.

4 THE COURT: Can I see that Exhibit? Thank you.

5 CROSS EXAMINATION

6 BY MR. ROTH:

7 Q. Good afternoon, Officer.

8 A. Good afternoon, sir.

9 Q. Officer Villanueva, if there is any question that I pose to
10 you that you don't understand, please ask me to rephrase it
11 before you answer that question, okay?

12 A. Yes, sir.

13 Q. This is not the first time you have testified, is that
14 correct?

15 A. No, sir.

16 Q. How many times have you testified before in court?

17 A. In my 19 years, maybe 15 or 20.

18 Q. And you prepared for this testimony today, is that correct?

19 A. Yes, sir.

20 Q. And you prepared by going over your testimony with the
21 government, is that correct?

22 A. Yes, sir.

23 Q. You met with them, right?

24 A. Yes, sir.

25 Q. And they asked you some questions and they said these are

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Villanueva - cross

1 the questions we are going to be asking you and you went
2 through the answers you would be giving. Is that fair to say?

3 A. Yes, sir.

4 Q. You just did a little dry rehearsal, is that fair to say?

5 A. They asked me basically what happened and I just explained
6 to them what I could remember.

7 Q. They asked a question, you gave an answer, you were
8 rehearsing for today's testimony; is that fair?

9 MS. MASELLA: Objection.

10 THE COURT: To the characterization of rehearsing?

11 MS. MASELLA: Yes.

12 THE COURT: Sustained.

13 BY MR. ROTH:

14 Q. How many times did you meet with them practicing your
15 testimony?

16 A. I would say twice.

17 Q. Do you recall when that was, sir?

18 A. I had notification a while back. I'm trying to think. A
19 few weeks ago? Don't know the exact date, I think it was
20 sometime in February and a little earlier today.

21 Q. So, it could have been around February 12th or so of this
22 year that you met with the government?

23 A. It is possible, sir. I don't know the exact date.

24 Q. And you indicated, sir, that you had a personal and
25 business relationship with the gas station manager Jesse Singh,

D355dor3

Villanueva - cross

1 is that correct?

2 A. Yes, sir.

3 Q. And explain to us, if you will, your professional
4 relationship with him.

5 A. My professional relationship is basically we -- we're --
6 the NYPD is registered with his gas station in order to get the
7 type of tire repair, whether it be a blow out, a flat tire or
8 even to change it from an old tire it a new tire, with his gas
9 station.

10 Q. And you indicated on direct examination that in addition to
11 that you have your personal car repaired there, is that
12 correct?

13 A. Yes, sir.

14 Q. And what is the extent of the repairs that Mr. Singh
15 performs on your car?

16 A. Basically an inspection, oil change, had brakes done. I
17 think a tune-up also. Just wear and tear on the car.

18 Q. And you indicated, sir, that you have a personal
19 relationship with him in addition to the professional
20 relationship; is that correct?

21 A. Yes, sir.

22 Q. And what does that consist of?

23 A. Basically, phone calls from time to time. I pass by when
24 I'm working to check in to make sure everything is okay. If
25 ever, like I said, a tire or anything like that, anything where

D355dor3

Villanueva - cross

1 I would, like I said I would pass by if there was any type of
2 crime that was committed at the business or something like that
3 he would call me and seek advice and I would give him advice.

4 Q. That sounds sort of like a professional relationship?

5 A. Maybe I misunderstood. Yes.

6 Q. I was asking about your personal relationship.

7 A. My personal relationship, besides getting my personal car
8 fixed there, I have had dinner with Jesse numerous times, had
9 social visits. Actually, I have visited the gas station after
10 work and pretty much just hung out with him sometimes.

11 (Continued on next page)

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D35Wdor4

Villanueva - cross

1 BY MR. ROTH:

2 Q. And he goes to functions, police functions with you, is
3 that fair to say?

4 A. Yes, sir.

5 Q. On how many occasions?

6 A. I would say a couple. I'm not, I don't, I'm not the only
7 one that has a personal relationship with Jesse, but there's
8 other police officers that have retirement parties,
9 fund-raisers, things like that. I would say, over the years,
10 definitely over ten times.

11 Q. Would you say it's fair to characterize your relationship
12 as you have his back and he has your back?

13 A. Yeah, I guess I would. Yeah.

14 Q. And have you given him a PBA card ever on occasion?

15 A. Yes, sir.

16 Q. On how many occasions?

17 A. I tried to give him one every year. I don't know. I
18 wouldn't be able to say I gave it to him every year since I've
19 been a police officer, but definitely on numerous occasions.

20 Q. And when you gave Mr. Singh your PBA card for him, what did
21 you tell him he could do with that card?

22 A. Just a, I just told him it's a courtesy card, in case he
23 was ever pulled over by the police for anything, that he can
24 show it so that he has a friend on the police department.

25 Q. Officer, you used the word "courtesy." And what courtesy

D35Wdor4

Villanueva - cross

1 could Mr. Singh expect to have extended to him in the event
2 that he was pulled over by a police officer and showed your PBA
3 card to him?

4 MS. MASELLA: Objection.

5 THE COURT: What was your understanding as to the
6 courtesy that would accorded to a card like that?

7 A. Basically, at times when a police officer pulls over a
8 motorist for an infraction and the driver pulls out one of
9 these PBA cards, a lot of times, police officers would warn and
10 admonish, meaning not necessarily give the motorist a summons
11 because he's a friend or family of a police officer.

12 Q. Is that, in fact, your individual practice, sir, based on
13 the 18 years you've been on the New York Police Department?

14 A. Yes, sir.

15 Q. Is it your understanding that that's a condoned practice,
16 meaning that it's an official policy that's condoned by your
17 superiors?

18 A. No, sir. Just a courtesy.

19 Q. That's not my question.

20 A. I don't understand the question then, sir.

21 Q. Is it your understanding that you have the authority when
22 you stop somebody for an infraction, a moving violation, if
23 they show you a PBA card that you can say, Okay, you're a
24 friend of the cops, go on your way?

25 A. To the police officers, in their discretion, yes, sir.

D35Wdor4

Villanueva - cross

1 Q. And you've been told that by a superior?

2 A. By my colleagues. Other police officers.

3 Q. Sir, the police department has a line of command, is that
4 fair to say?

5 A. Yes, sir.

6 Q. Do you take your marching orders, so to speak, from your
7 colleagues or from your commanding officer?

8 A. From my immediate supervisor, my commanding officer.

9 Q. So my question to you, Officer, is: Does your commanding
10 officer either condone that policy or tell you that that policy
11 is okay as a matter of law?

12 A. No, sir.

13 Q. Is that something you do on your own? Is that fair to say?

14 A. Yes, sir.

15 Q. You were breaking the law, is that fair to say?

16 A. No, sir.

17 Q. Now, this stop, this car stop, was a couple years ago, is
18 that right?

19 A. Approximately a year and a half ago.

20 Q. It was November 2011, is that right?

21 A. Yes, sir.

22 Q. How many car stops have you made since then?

23 A. Too many to give an actual number, but, I don't know,
24 somewhere, year and a half, I would say somewhere between maybe
25 20 or 30.

D35Wdor4

Villanueva - cross

1 Q. Is it fair to say, sir, that you've been given strict
2 protocol or rules and regulations concerning car stops that you
3 make, how to conduct yourself during those car stops?

4 A. Are you referring to my training, sir?

5 Q. Yes, your training.

6 A. Yes, sir.

7 Q. And you trained a long time ago, is that fair to say?

8 You're almost ready to retire now; you have 18 in, right?

9 A. 19.

10 Q. 19, okay.

11 THE COURT: But who's counting?

12 THE WITNESS: I am.

13 BY MR. ROTH:

14 Q. You have one more to go, right?

15 A. That's it.

16 Q. That's it.

17 So you were trained at the academy sort of a long time ago,
18 I think, but is it fair to say that you more recently have been
19 trained in how to conduct car stops and fill out the 250, as
20 you refer to it?

21 A. From time to times at roll calls, after roll call, the
22 supervisors will give us a brief training, any updates
23 regarding car stops or procedures, if there's any changes, from
24 time to time. And based on those kind of things, I usually
25 address my car stops accordingly.

D35Wdor4

Villanueva - cross

1 Q. You follow the rules and regulations concerning car stops?

2 A. Yes, sir.

3 Q. And is it fair to say, sir, that the stop-and-frisk car
4 stops and car stops like this and these forms, the 250s, you're
5 aware that it's been a very big item in the news recently?

6 A. Recently, yes, sir.

7 Q. And your department, your commanding officers, have
8 addressed that issue in terms of the importance of filling out
9 paperwork correctly, is that right?

10 A. Yes, sir.

11 Q. And you try to follow that the best you can, is that
12 correct?

13 A. The best I can, sir.

14 Q. And when you say addressed in the news, you've been an
15 officer -- I'm sorry, the whole time in the Bronx?

16 A. Yes, sir.

17 Q. You're familiar with the expression "driving while black,"
18 are you not?

19 THE COURT: I didn't hear the expression. What is it?

20 MR. ROTH: Driving while black.

21 THE COURT: Driving while black?

22 MR. ROTH: While black, yes.

23 MS. MASELLA: Objection, your Honor.

24 THE COURT: No. Are you familiar with it?

25 THE WITNESS: Not necessarily.

D35Wdor4

Villanueva - cross

1 A. I mean, I don't know exactly what that means.

2 Q. You've never heard about people complaining that they were
3 pulled over just because they were black, driving?

4 A. I've heard that, yeah, but not in that exact statement that
5 you just stated.

6 Q. And one of the important things is to document why somebody
7 is pulled over, is that right?

8 A. Yes. To document why I was pulled over, is what you're
9 saying, sir?

10 Q. Yes. The reason you pull somebody over on a car stop.

11 A. Usually we document that in the 230, UF250 if we fill that
12 out, or in the memo book.

13 Q. Would you explain to the members of the jury what a memo
14 book is?

15 A. A memo book is a book that we keep and you write down
16 pretty much your assignment, the date, your assignment, the
17 tour that you do, if you work any different assignments besides
18 the regular tour of duty, whatever your assignment is, if you
19 work -- I'm sorry. If you work a specific parade, all those
20 type of things, pretty much just a log of everything that you
21 do throughout the day, what your assignment is, vehicle
22 inspections, and things like that.

23 Q. Do you put other significant events there?

24 A. Yes. Usually if you respond to a radio run, you put that
25 in also.

D35Wdor4

Villanueva - cross

1 Q. And on the date in question, when you pulled over the
2 Mercedes and you took Mr. Barrett out of the front seat of the
3 car, was that done at gunpoint?

4 A. I do remember taking out my gun, out of my holster when the
5 vehicle was being, was approaching me, because I was on foot.
6 I would say yes, sir.

7 Q. And you took him out of the car, you asked -- you ordered
8 him out of the car, and did you make him spread eagle on the
9 car?

10 A. No, sir.

11 Q. Did you --

12 A. I holstered my weapon once he turned the car, the vehicle
13 off, and he proceeded out of the car, when I asked him to. And
14 I don't remember exactly, if I, like you say, spread eagle,
15 with his back towards me or his front towards me on the car. I
16 can't remember if I did that or not.

17 Q. Do you recall patting him down, frisking him?

18 A. Yes, sir.

19 Q. What were the results of the frisk?

20 A. If I recall correctly, he had sweat pants on. He just gave
21 me his credentials. I don't remember him having anything else
22 on him.

23 Q. There was certainly no contraband on him, is that fair to
24 say?

25 A. I did not recover any, sir.

D35Wdor4

Villanueva - cross

1 Q. And you said you went through his paperwork earlier, on
2 direct examination, is that correct?

3 A. Yes, sir.

4 Q. By the way, on direct, you indicated you were aware of his
5 name, is that correct, Mr. Barrett?

6 A. After I got his driver's license.

7 Q. And you remembered that name for a year and a half later?

8 A. Yes, sir.

9 Q. You pretty good with names?

10 A. Pretty good.

11 Q. Are you pretty good with recalling specifics, although
12 you've done many car stops, this particular car stop?

13 A. Yes, sir.

14 Q. You remember all the details about that?

15 A. Pretty much.

16 Q. And, Officer, you're pretty good with heights and weights,
17 from your experience, 18 years as a police officer?

18 A. Pretty good.

19 Q. And how tall are you, sir?

20 A. I'm five eight.

21 Q. Five eight. You indicated that Mr. Barrett, the driver,
22 was, I think you said six three or six four. Is that correct?

23 A. Approximately, yeah.

24 Q. That's your approximation, is that correct?

25 A. Yes, sir.

D35Wdor4

Villanueva - cross

1 MR. ROTH: I'd ask, with the assistance of the
2 government, if we could publish 3538B that was introduced.
3 That's the same as the government exhibit number -- I'm sorry.

4 MS. MASELLA: It was only admitted for recorded
5 recollection.

6 THE COURT: Yes. It's not in evidence.

7 MR. ROTH: Okay.

8 Q. Do you recall what height was listed on Mr. Barrett's
9 driver's license?

10 A. Not off the top of my head.

11 Q. And if you saw your 250, would that perhaps refresh your
12 recollection?

13 A. Yes, sir.

14 MR. ROTH: If I may approach the witness, Judge.

15 THE COURT: You may.

16 BY MR. ROTH:

17 Q. Oh, you still have one up there?

18 THE COURT: He's got it right there.

19 MR. ROTH: I'm sorry.

20 Q. Could you take a moment and see if that refreshes your
21 recollection as to what height Mr. Barrett was, you recorded
22 his height as?

23 A. Yes, sir. It says six feet seven inches.

24 THE COURT: Does that refresh your recollection? Do
25 you have a memory of this now, or are you just reading?

D35Wdor4

Villanueva - cross

1 THE WITNESS: No. I was just reading. I have a
2 recollection by looking at the 250.

3 BY MR. ROTH:

4 Q. Do you have any question, I mean, whether he was really
5 true six seven or not?

6 A. No, sir.

7 Q. You indicated, sir, that you saw certain items in the car
8 that day. Did you indicate anywhere on the UF250 that you saw
9 a baseball bat?

10 A. No, sir.

11 Q. Did you indicate anywhere on the 250 that you saw a ski
12 mask?

13 A. There is a second, the back part of this. I don't know if
14 I might have wrote it on the back of that.

15 Q. I'll hand you, I didn't know the government hadn't given
16 you the second page. It's a two-page document, for the sake of
17 completeness.

18 THE COURT: What are we calling this? Are we calling
19 this 3538B2?

20 MR. ROTH: It was still marked the same. It's the
21 same number.

22 THE COURT: All right. So 3538B2.

23 BY MR. ROTH:

24 Q. See if this is what you were referring to, the second page
25 of the 250.

D35Wdor4

Villanueva - cross

1 A. Yes, sir.

2 Q. You were just saying that there is a spot on that 250,
3 which is a form, to record the contents of anything that you
4 recover, any contraband, and you weren't sure that day whether
5 or not you recorded the ski mask or the baseball bat, is that
6 correct?

7 A. Yes, sir.

8 Q. If you look at that, does that refresh your recollection as
9 to whether on the date in question, November 14, 2011, you, in
10 fact, indicated that you had seen a ski mask, a black winter
11 ski mask, and a softball bat?

12 A. According to the report, it's not listed on here.

13 Q. That's your report, right?

14 A. Yes, sir.

15 Q. And when you say "listed," there's a specific place for
16 different types of weapons or any other contraband, is that
17 correct?

18 A. Yes, sir.

19 Q. Did you record Mr. Barrett's address at that time?

20 A. Yes, sir.

21 Q. And what did you record it as, if you recall?

22 A. By referring to the document, you're saying?

23 Q. If you don't have an independent recollection of it --

24 A. I do not.

25 Q. If that would help refresh your recollection --

D35Wdor4

Villanueva - cross

1 A. It would.

2 Q. -- I would ask you to review it?

3 A. It says --

4 THE COURT: Does that refresh your recollection? Do
5 you have any recollection of what he told you, or do you just
6 have a writing that you took down?

7 THE WITNESS: I have a writing that I took down on the
8 report.

9 THE COURT: And it was fresh at the time you wrote it
10 then?

11 THE WITNESS: Yes, sir.

12 THE COURT: Based on information you got from the
13 individual, or from a document, what?

14 THE WITNESS: From the driver's license.

15 THE COURT: From the driver's license. Okay.

16 So you want him to read it as a recorded recollection?

17 MR. ROTH: Please.

18 THE WITNESS: 600 Warburton Avenue, Yonkers, New York,
19 zip code 10701, apartment second floor.

20 BY MR. ROTH:

21 Q. And, by the way, you didn't record anything regarding a
22 black 'do-rag in the trunk of the car, is that right?

23 A. On the report, no, sir.

24 Q. And that is after you searched, with your partner, the
25 entire interior of that car, is that correct?

D35Wdor4

Villanueva - cross

1 A. Yes, sir.

2 Q. Under the floor mats and in the side compartments and in
3 the trunk, is that right?

4 A. Yes, sir.

5 Q. And Mr. Barrett said, Go right ahead, search my car, you
6 have my consent, is that correct?

7 A. Yes, sir.

8 Q. And you asked him, Do you have anything to hide, and he
9 said no, is that correct?

10 A. Yes, sir.

11 Q. Did you ever observe the odor of marijuana that day?

12 A. Yes, sir.

13 Q. Did you indicate that in the report?

14 A. No, sir.

15 Q. Well, how did you observe the odor of marijuana, sir?

16 A. Just the smell.

17 Q. When did you observe the odor of marijuana?

18 A. When I approached the vehicle.

19 Q. How do you characterize that smell?

20 A. Just, it's a certain scent. I don't know how I would
21 describe it. Just over the years of working as a police
22 officer and smelling it numerous times, and it's a strong scent
23 of -- I don't know how I would describe the scent, sir.

24 THE COURT: Do we need a description of the scent?

25 MR. ROTH: No. That's unclear enough.

D35Wdor4

Villanueva - cross

1 Q. So I assume when you opened the door or he got out of the
2 car or rolled down the window and you smelled what you thought
3 was marijuana, you searched the car for marijuana, is that fair
4 to say?

5 A. Yes, sir.

6 Q. And did you find any loose marijuana?

7 A. No, sir.

8 Q. Did you find any what we call roaches or burnt joints?

9 A. No, sir.

10 Q. It's a crime, is it not, to operate a vehicle under the
11 influence of drugs? Is it not?

12 A. Yes, sir.

13 Q. And that day, did you make Mr. Barrett, the operator of
14 that vehicle, perform any sobriety tests?

15 A. No, sir.

16 Q. You certainly didn't arrest him for driving while
17 intoxicated on drugs, is that fair to say?

18 A. No, sir.

19 THE COURT: Wait. It's not fair to say, or it is fair
20 to say?

21 THE WITNESS: It's fair to say that I did not arrest
22 him.

23 BY MR. ROTH:

24 Q. Do you recall, Officer, being -- I'm sorry. Withdrawn.

25 Do you recall after the incident receiving a telephone

D35Wdor4

Villanueva - cross

1 call from a Detective Kruse who was investigating this
2 incident?

3 A. Yes, sir.

4 Q. And is it fair to say that Detective Kruse asked you what
5 transpired during this car stop?

6 A. Yes, sir.

7 Q. And you told him, I guess, tell me if I'm wrong, what you
8 thought was significant or important about that car stop, is
9 that correct?

10 A. Yes, sir.

11 Q. Is it fair to say that when Detective Kruse asked you the
12 details of that car stop, you never mentioned anything about a
13 black winter ski mask in the trunk of that car?

14 A. I'm sorry, sir? The question again, please.

15 Q. Did you tell Detective Kruse when he questioned you about
16 the incident, the car stop, sometime after the car stop, that
17 you found a black winter ski mask in that car?

18 A. Yes, sir.

19 Q. You told him that?

20 A. Yes, sir.

21 Q. Positive?

22 A. Positive.

23 Q. And did you tell him you found a 'do-rag?

24 A. I think so, sir.

25 Q. And did you tell him you found a baseball bat?

D35Wdor4

Villanueva - cross

1 A. I think so, sir.

2 Q. By the way, did you voucher those items?

3 A. No, sir.

4 Q. So you didn't take the items out of the car --

5 A. I did not.

6 Q. -- to put in police property?

7 A. No, sir. I didn't voucher the items.

8 Q. Did you take a picture of them with your cell phone?

9 A. No, sir.

10 Q. So the police department doesn't have those items?

11 A. You're speaking about the 'do-rag and the ski mask?

12 Q. Yes.

13 A. No, sir.

14 Q. And they don't have the baseball bat?

15 A. No, sir.

16 Q. Did you ask Mr. Barrett, the driver, where he was going
17 that day?

18 A. I recall asking him where he was coming from. I don't
19 remember if I asked him where he was going.

20 Q. And did he respond, if you recall?

21 A. Yes, sir.

22 Q. What was his response?

23 A. He --

24 THE COURT: Wait. Is this hearsay?

25 MS. MASELLA: Objection.

D35Wdor4

Villanueva - cross

1 MR. ROTH: Withdrawn, your Honor.

2 THE COURT: Okay. Sustained.

3 BY MR. ROTH:

4 Q. Officer, you didn't put Mr. Barrett under arrest that day,
5 did you?

6 A. No, sir.

7 Q. Was there anything else in the trunk of the car, if you
8 recall?

9 A. Besides the ski mask, the 'do-rag, and the small miniature
10 type bat, I don't recall anything else being in the trunk, sir.

11 Q. And that conversation you had with Detective Kruse, that
12 was only on the phone; you never met with him personally?

13 A. That is correct, sir.

14 Q. On your memo book entries that day, did you record anything
15 about those items you say you saw in the car that day?

16 A. No, sir.

17 MR. ROTH: I have no further questions.

18 THE COURT: All right.

19 Ms. Stafford.

20 MS. STAFFORD: No questions, your Honor.

21 THE COURT: Any redirect?

22 MS. MASELLA: Briefly, your Honor.

23 THE COURT: Yes.

24 REDIRECT EXAMINATION

25 BY MS. MASELLA:

D35Wdor4

Villanueva - redirect

1 Q. Officer Villanueva, do you recall that on cross-examination
2 you were asked a number of questions about your memory of this
3 event and specific things that happened that day?

4 A. Yes, sir. Yes, ma'am. I'm sorry.

5 Q. That's all right.

6 Is there a reason why this particular incident sticks
7 in your mind?

8 A. Yes. Jesse being a good friend of mine and due to the
9 phone call, nature of the phone call, I felt -- I'm sorry.
10 What was the question?

11 Q. Is there a reason why this sticks in your mind? And then
12 explain the reason.

13 A. Because Jesse's a very good friend of mine and the nature
14 of the phone call, that's why it sticks out more than other car
15 stops.

16 MS. MASELLA: Thank you, Officer.

17 MR. ROTH: Nothing.

18 THE COURT: You can step down, Officer. Thank you.

19 (Witness excused)

20 THE COURT: Ladies and gentlemen, why don't we take a
21 short afternoon break. Don't discuss the case, and keep an
22 open mind, of course.

23 There should be stuff back there. I'm also going to
24 ask Mr. Halegua to go back with you and just start getting your
25 contact information, cell phones and phones numbers in case we

D35Wdor4

Villanueva - redirect

1 have to contact you because of the weather, or something,
2 maybe. And I also want to make sure you have the phone number
3 to my chambers, so if you need to call, for whatever reason,
4 you know who to call. We'll resume in about ten minutes.

5 Okay?

6 Ms. Joachim, if you would hold back for a second,
7 thanks.

8 (Jury excused)

9 THE COURT: Okay. Have a seat.

10 All right. Ms. Joachim, we talked several times about
11 your travel schedule, and that's fine. I mean, I don't know
12 how fast this trial will go. But if it goes past your travel
13 schedule, I'll excuse you. I have alternates. But I don't
14 know that it will go past that. I think I'm going to presume
15 maybe we'll get this done and you'll be able to deliberate and
16 participate fully as a juror. That's the reason why I have not
17 excluded you, and I just don't want you to worry about it
18 between now and then. Okay?

19 JUROR: Great.

20 (Juror excused)

D35Wdor4

Villanueva - redirect

1 (In open court; jury not present)

2 THE COURT: Have a seat. I took that up with her just
3 because Ms. Joachim had mentioned to my law clerk that she was
4 very concerned that it hadn't registered with us. We talked
5 about it a couple of times, so I just wanted to put her at ease
6 so she wasn't worked up or distracted.

7 Anything in connection with that exchange that anybody
8 wants to discuss? No. Okay.

9 MS. FONTIER: Not at the moment, your Honor. But if
10 we get to that point, we'll reserve argument as to --

11 THE COURT: As to whether to excuse her, you mean?

12 MS. FONTIER: Whether to excuse her or take a break,
13 as we discussed.

14 THE COURT: We'll talk about it. But we certainly are
15 aware that there are certain people who have travel plans, so
16 we'll discuss that if and when we get to that.

17 Let's take a short break. You guys can use the
18 restroom, get a drink. We'll pick up again in six minutes.

19 (Recess)

D35Wdor4

Villanueva - redirect

1 (In open court; jury present)

2 THE COURT: Just remain standing until everybody sits.

3 We'll just give Ms. Joachim back her notebook. You forgot
4 that.

5 Okay. Have a seat.

6 The government will now call its next witness.

7 MS. MASELLA: The government calls Luis Segarra.

8 THE COURT: If you could, just please stand and raise
9 your right hand.

10 LUIS SEGARRA,

11 called as a witness by the Government,

12 having been duly sworn, testified as follows:

13 THE COURT: Officer, just keep your voice up, move a
14 half an inch or two closer to that mike.

15 You may proceed, Ms. Masella.

16 MS. MASELLA: Thank you, your Honor.

17 DIRECT EXAMINATION

18 BY MS. MASELLA:

19 Q. Good afternoon, Officer Segarra.

20 A. Good afternoon.

21 Q. How are you employed, sir?

22 A. With the New York City Police Department.

23 Q. How long have you been with the NYPD?

24 A. For 19 years.

25 Q. What is your title with the NYPD?

D35Wdor4

Segarra - direct

1 A. Police officer.

2 Q. What is your current assignment with the NYPD?

3 A. 28 Precinct in Manhattan.

4 Q. What area, approximately, in Manhattan?

5 A. Harlem.

6 Q. What were you doing before you were assigned to the 28th
7 Precinct?

8 A. I was in the 52nd Precinct, school unit.

9 Q. How long were you in the 52nd Precinct in the school unit?

10 A. 18 years.

11 Q. When did that end?

12 A. May 16 of 2012.

13 Q. You mentioned that you were in the school unit. What are
14 your duties in connection with being a police officer in the
15 school unit?

16 A. We deal with all the calls that we get from the schools,
17 all the crime that happens in school. And dismissal also.

18 Q. Do you know an individual named Jesse Singh?

19 A. Yes, I do.

20 Q. How do you know that individual?

21 A. He basically owned a shop where they do repairs for the
22 precinct, the tire shop, you know, for the tires, and minor
23 things that happen to the police cars.

24 Q. Where was that shop located?

25 A. That's Bedford Park and Jerome.

D35Wdor4

Segarra - direct

1 Q. Have you yourself used that shop for car repairs on
2 occasion?

3 A. Yes, we have.

4 Q. I want to direct your attention now to November 14 of 2011.
5 Were you working that day?

6 A. Yes, I was.

7 Q. Were you working alone or with a partner?

8 A. My partner and the school team.

9 Q. Who was that?

10 A. The school team.

11 Q. I'm sorry?

12 A. My partner, Officer Villanueva.

13 Q. What was his first name?

14 A. Carlos.

15 Q. What were you doing that day?

16 A. At that time?

17 Q. Yes.

18 A. Basically, we were just tacking up with the sergeant. She
19 was just letting us know about the gangs after the school
20 dismissal, in the area.

21 Q. Did there come a time that day when your partner, Officer
22 Villanueva, received a phone call?

23 A. Yes.

24 Q. Approximately what time was that?

25 A. I would say dismissal time, from 12:30 to one, something

D35Wdor4

Segarra - direct

1 like that.

2 Q. In the afternoon?

3 A. Yes.

4 Q. In what area were you at that time?

5 A. I was on Mosholu Parkway and Jerome Avenue.

6 Q. Were you in a car or on foot?

7 A. We were on foot at the time.

8 Q. After your partner, Officer Villanueva, received that phone
9 call, what did you and your partner do?

10 A. Basically, my partner told Jesse to drive to our location,
11 and so we could check out the car that was following. And
12 after that, the car that was following stopped at the red
13 light, and we basically approached the vehicle.

14 Q. Did you observe Jesse Singh drive by in his car?

15 A. Yes, I did.

16 Q. And can you describe the vehicle that you observed that you
17 pulled over?

18 A. It was a black Mercedes-Benz.

19 Q. Can you provide a further description of the type of model,
20 or anything like that?

21 A. I'm not good at that when it comes to cars. But it was a
22 black Mercedes.

23 Q. And the first time that you saw the black Mercedes, where
24 was it in relation to Mr. Singh's car?

25 A. It was behind the, a car that was stopped at the red light.

D35Wdor4

Segarra - direct

1 Q. The Mercedes was?

2 A. On -- right.

3 Q. Where did you pull over the Mercedes?

4 A. Right on the Mosholu, it would be the southeast side of
5 Mosholu Parkway, and Jerome Avenue.

6 Q. How many occupants were in the Mercedes at that time?

7 A. It was two.

8 Q. What did you do during the car stop?

9 A. I basically approached the vehicle and we had the vehicle
10 come basically to the service side, so that it was, you know,
11 to prevent spill back of vehicles, so basically had the, both
12 the motorist and the passenger exit the vehicle.

13 Q. Once the driver and the passenger came out of the vehicle,
14 what did you do at that point?

15 A. I did a quick, quick pat down, make sure he had no weapons.
16 And asked for the identification.

17 Q. Are you referring to the driver or the passenger?

18 A. The passenger.

19 Q. You spoke primarily with the passenger?

20 A. Yes, I did.

21 Q. What was the result of your pat down on the passenger?

22 A. He didn't have anything on him, any weapons, and he
23 basically didn't have identification either. So ...

24 Q. When he did not have an identification, did you do anything
25 else to attempt to identify him?

D35Wdor4

Segarra - direct

1 A. Well, I basically asked him for a phone number from a
2 relative or something just to prove who he was and where he
3 lived, and he gave me the number to his girlfriend, which I
4 tried calling twice and nobody picked up.

5 Q. Did you ask the passenger for a name?

6 A. Yes, I did.

7 Q. Do you recall what name he provided?

8 A. It was Jermaine Otto.

9 Q. Can you spell the last name, please?

10 A. O-T-T-O.

11 Q. Did you ask him for a date of birth?

12 A. Yes, I did.

13 Q. Sitting here today, do you recall what that was?

14 A. I can't.

15 Q. You do not recall?

16 A. No.

17 Q. At the time of the car stop, did you prepare any paperwork?

18 A. We did a UF250, yes, stop and frisk.

19 Q. What is a UF250?

20 A. Basically, when you suspect someone to have committed or
21 about to commit a crime and you stop them, so you basically
22 fill out that form.

23 Q. What kinds of information do you put on the form?

24 A. Name, address, date of birth, description of the crime
25 that's suspected, and that's about it.

D35Wdor4

Segarra - direct

1 Q. Did you fill out a UF250 in this case?

2 A. Yes, I did.

3 Q. Did you do it at or around the time that you made the car
4 stop?

5 A. At around the time.

6 Q. And did you attempt to be careful and accurate in recording
7 information that you received from the passenger?

8 A. Yes, I did.

9 MS. MASELLA: May I approach, your Honor.

10 THE COURT: You may, and you don't have to ask.

11 MS. MASELLA: Thank you.

12 THE COURT: Everybody can approach.

13 BY MS. MASELLA:

14 Q. I'm showing you, Officer, what's been marked as 3540B for
15 identification. Take a moment to look at it. Do you recognize
16 that document, Officer?

17 A. Yes. Yes, I do.

18 Q. What is the document?

19 A. It's a UF250, stop, question, and frisk.

20 MS. MASELLA: Your Honor, at this time, I would ask
21 that it be entered as a recorded recollection and that the
22 witness be permitted to read portions from it.

23 THE COURT: Any objection?

24 MS. STAFFORD: As long as it's just going to be read,
25 your Honor.

D35Wdor4

Segarra - direct

1 THE COURT: Yes. So just certain portions. You'll
2 identify which portions you want read?

3 MS. MASELLA: Yes, your Honor.

4 THE COURT: Go ahead.

5 BY MS. MASELLA:

6 Q. Officer Segarra, I'm looking at the UF250 in front of you,
7 can you tell what date of birth the passenger provided when you
8 asked him for that information?

9 A. Yes. It's January 1, 1986.

10 Q. Thank you.

11 MS. MASELLA: One moment.

12 No further questions at this time, your Honor.

13 THE COURT: Any cross-examination?

14 MS. STAFFORD: Yes, your Honor.

15 CROSS-EXAMINATION

16 BY MS. STAFFORD:

17 Q. Good afternoon, Officer Segarra.

18 A. Good afternoon.

19 Q. As Ms. Masella was asking you questions, you did fill out
20 this report very carefully, right?

21 A. Yes, I did.

22 Q. And accurately, as you recall?

23 A. Yes.

24 Q. And can you take a look at the report, where it describes
25 the age and the height of the individual?

D35Wdor4

Segarra - cross

1 A. Okay.

2 Q. What do you have recorded as the height?

3 A. Six foot.

4 Q. When you stopped the vehicle that day, Officer Segarra,
5 does it say anywhere in your report that there were any
6 firearms found?

7 A. No.

8 Q. Does it say anywhere in your report that there were any ski
9 masks found?

10 A. Not in my report, no.

11 Q. Any, an aluminum bat?

12 A. No.

13 Q. A 'do-rag?

14 A. No.

15 Q. Was there any indication of a strong odor of marijuana?

16 A. On the form?

17 Q. On the form.

18 A. No.

19 MS. STAFFORD: No further questions, your Honor.

20 THE COURT: Okay. Any redirect?

21 I'm sorry. Mr. Roth.

22 MR. ROTH: Thank you, Judge.

23 CROSS-EXAMINATION

24 BY MR. ROTH:

25 Q. Good afternoon, Officer.

D35Wdor4

Segarra - cross

1 A. Good afternoon, sir.

2 Q. If you don't understand a question that I'm posing to you,
3 please let me know and I'll rephrase it, before you answer.

4 A. Okay.

5 Q. When you did that car stop on that day, do you recall the
6 exact date?

7 A. Yes. It was November 14 of last year.

8 Q. And do you recall that as you sit here, as you're seated
9 here now, or just from looking at the form?

10 A. Going back to my memo book.

11 Q. And in your memo book, do you record significant events
12 that transpired during the course of your shift?

13 A. Yes, I do.

14 Q. Do you record any contraband in your memo book to reflect
15 any contraband that was found that day?

16 A. No.

17 Q. Were there any other police officers besides yourself and
18 Police Officer Villanueva there that day?

19 A. Yes.

20 Q. And do you recall the names of those police officers?

21 A. Yes, I do.

22 Q. And could you share that with us?

23 A. Officer Kennedy, Officer Rodriguez, Sergeant Freddoloso,
24 Officer Villanueva, and Officer Velez and Officer -- I just
25 can't remember the last person.

D35Wdor4

Segarra - cross

1 Q. That's a lot of officers. Did you call for backup?

2 A. No.

3 Q. Did they just happen -- how did those officers come to the
4 scene?

5 A. Because we were having a meeting with the sergeant at the
6 time, at that location.

7 Q. And so did all those officers actually come over and
8 supervise your car stop?

9 A. No. We all in the same unit, so we do dismissal, because
10 of Clinton High School and the high crime around that area.

11 Q. No. I appreciate that, Officer. What I'm saying to you is
12 when you were taking apart that car that day, were those other
13 officers that you just mentioned there, present?

14 A. Yes.

15 Q. So they watched you search the car, is that fair to say?

16 A. I didn't search the car.

17 Q. Did you see your fellow officer, Villanueva, search the
18 car?

19 A. Yes.

20 Q. What, if anything, were you doing with the passenger or the
21 driver at the time that the car was being searched?

22 A. Just keep an eye on him.

23 Q. Were they handcuffed?

24 A. No.

25 Q. Did you have any weapon drawn?

D35Wdor4

Segarra - cross

1 A. In the beginning, yes. At the beginning of the car stop,
2 yes. Not after they came out of the car.

3 Q. So when you stopped the car, you stopped it at gunpoint and
4 you said, Stop, get out of the car?

5 A. No. When you say at gunpoint, I'm not pointing my gun at
6 the person. I just have it out of my holstered.

7 Q. So you have it unholstered by your side?

8 A. Right, that's correct.

9 Q. And your partner as well has it unholstered by his side?

10 A. That's correct.

11 Q. Any other officers approach the car that day --

12 A. No.

13 Q. -- with their gun unholstered?

14 A. No.

15 Q. Did you know Mr. Singh before this day?

16 A. Yes, I do.

17 Q. You said that the police department has their cars serviced
18 there, is that correct?

19 A. Yes, our precinct.

20 Q. Your precinct?

21 A. Right.

22 Q. You're the 52?

23 A. At the time, 52 Precinct, yes.

24 Q. How long have you been an officer?

25 A. 19 years.

D35Wdor4

Segarra - cross

1 Q. Do you have just a professional relationship with
2 Mr. Singh?

3 A. Professional and personal also.

4 Q. And what's the personal relationship?

5 A. Well, he's been around since I came out of the academy,
6 basically two years after I came out the academy, so, yeah, we
7 became friends.

8 Q. Could you describe for the members of the jury the nature
9 of that friendship?

10 A. He basically comes out to the, when we have an event,
11 retirement party, he comes out and just participates and shows
12 up at the party, stuff like that.

13 Q. He contributes to the --

14 A. Meaning that he shows up and someone will just retire and
15 he wants to go there and show respect.

16 Q. Right. But also, besides showing his moral support for
17 them, he actually contributes out of his pocket?

18 A. Never seen that, no.

19 (Continued on next page)

20

21

22

23

24

25

D355dor5

Segarra - cross

1 BY MR. ROTH:

2 Q. He gets a free ticket to the retirement party?

3 A. He pays for his ticket.

4 Q. So it does come out of his pocket and he pays for his
5 ticket?

6 A. Yes.

7 Q. And you personally, sir, do you have your car serviced
8 there, your personal car?

9 A. No.

10 Q. Have you ever given him a PBA card?

11 A. Yes.

12 Q. On how many occasions?

13 A. I would say maybe a couple of years in a row.

14 Q. When you give Mr. Singh that PBA card, your PBA card, what
15 do you tell him when you give it to him?

16 A. What do I tell him when I give it to him? I give it to
17 him. To me it comes naturally. Here you go.

18 Q. And have you had any discussion with him about what he can
19 do with your PBA card that you give him?

20 A. It is just a courtesy thing.

21 Q. What is your understanding of what the courtesy is?

22 A. Basically show him, giving him a card that has my shield
23 number on it.

24 Q. With your shield number, you pointed to the shield on your
25 uniform now?

D355dor5

Segarra - cross

1 A. Right.

2 Q. What is your expectation of what he can do with that?

3 A. Hang it on the wall, basically, because that's what he
4 does. He basically pasted them on the wall. Everyone who
5 knows him, they give him a card and he tapes it to the wall.

6 Q. He doesn't carry it in his wallet?

7 A. I don't know if he does.

8 Q. Now, did you see the contents of the trunk that day?

9 A. Yes, I did.

10 Q. And were any of the contents of the trunk vouchered that
11 day?

12 A. No.

13 Q. You say no like it is obvious they wouldn't have been
14 vouchered, is that fair to say?

15 A. Right.

16 Q. Because there wasn't any contraband, is that fair to say?

17 A. That's right.

18 Q. And did you photograph the contents of the trunk?

19 A. No.

20 Q. Did you voucher anything from the interior of the car?

21 A. What do you mean voucher everything?

22 Q. You didn't see any contraband anywhere in the interior
23 compartment of that car, is that fair to say?

24 A. No. I didn't.

25 Q. You testified you have a clear memory that the car was a

D355dor5

Segarra - cross

1 black Mercedes; is that correct?

2 A. That's correct.

3 Q. Did there come a time, sir, approximately a year and a half
4 after the incident in 2011, November 14th, that you were called
5 down to the U.S. Attorney's office in connection with this
6 case?

7 A. No.

8 Q. Were you ever prepared at all for your testimony today?

9 A. No.

10 Q. You never spoke to either one of these assistants?

11 A. To date?

12 Q. To date.

13 A. Yes, I did speak to them.

14 Q. Did you speak to him --

15 A. I didn't prepare for this but I did speak to them.

16 Q. So they didn't ask you what questions they would be asking?

17 THE COURT: Rephrase that question.

18 Q. When you spoke to -- was it either one of these assistants
19 here?

20 A. Uh-huh. Yes.

21 Q. And was the case agent there as well?

22 A. Yes.

23 Q. What was the content of your conversation with them prior
24 to testifying today?

25 A. Basically, if I recall, the 250.

D355dor5

Segarra - cross

1 Q. And, prior to your testimony in this courtroom today, were
2 you -- did you come down here with Mr. Singh?

3 A. Yes, I did.

4 Q. You came down here with Mr. Singh and did you come down
5 here with Officer Villanueva as well?

6 A. Yes, I did.

7 Q. The three of you came down here together?

8 A. Yes, we did.

9 Q. And, prior to testifying were you all in the same room in
10 the witness room together prior to testifying?

11 A. Yes, we were.

12 Q. And there is no question in your mind what this case that's
13 on trial, the nature of the case, is that correct?

14 A. Correct.

15 Q. You knew sometime after the incident that you participated
16 in the car stop on November 14th, 2011, that subsequently there
17 had been an arrest made and there was a federal prosecution, is
18 that correct, concerning that incident or people involved in
19 that incident?

20 A. I don't understand. I don't understand what you are trying
21 to say, sir. I'm sorry.

22 Q. Did you know the connection or any connection between that
23 car stop and the case that is on trial right here in federal
24 court before you came down here?

25 A. Yes.

D355dor5

Segarra - cross

1 Q. Didn't Jesse and Officer Villanueva, they knew that there
2 had been a prosecution that was connected to that car stop and
3 that car?

4 MS. MASELLA: Objection.

5 THE COURT: Sustained.

6 Q. To your knowledge, do you know whether any police officer
7 made any report whatsoever regarding a mask or a do-rag or
8 anything else being recovered from the car that day?

9 A. No.

10 Q. You don't know or you are not aware of it?

11 A. I'm not aware of that.

12 MR. ROTH: I have no further questions.

13 THE COURT: Okay.

14 Any redirect?

15 MS. MASELLA: No, your Honor.

16 THE COURT: Okay. You can step down. Thank you very
17 much, Officer.

18 Government, your next witness?

19 MS. MASELLA: One moment, your Honor.

20 (Pause)

21 MS. MASELLA: Your Honor, the government calls Djujka
22 Krco.

23 DJUJKA KRCO,

24 called as a witness by the Government,

25 having been duly sworn, testified as follows:

D355dor5

Segarra - cross

1 THE COURT: State your name and spell your name, first
2 and last, for the record.

3 THE WITNESS: Djujka Krco.

4 THE COURT: All right. And you better spell those.

5 THE WITNESS: D J-U-J-K-A.

6 THE COURT: And last name?

7 THE WITNESS: K-R-C-O.

8 THE COURT: K-R-C-O. And pronounced Krco?

9 THE WITNESS: Krco.

10 THE COURT: All right.

11 You are going to have to help me with that. Keep your
12 voice up nice and loud.

13 THE WITNESS: Okay.

14 THE COURT: And slow enough so that the court reporter
15 can get everything down. Thank you.

16 You may proceed, Ms. Masella.

17 MS. MASELLA: Thank you, your Honor.

18 DIRECT EXAMINATION

19 BY MS. MASELLA:

20 Q. Good afternoon.

21 A. Good afternoon, ma'am.

22 Q. How are you employed?

23 A. What did you say?

24 Q. How are you employed?

25 A. I'm self-employed.

D355dor5

Krc0 - direct

1 Q. You are self-employed.

2 Can you describe your business, please?

3 A. Sure. I start a business in '94 with me and my husband.

4 We open wholesaler like the supplying small grocery store with
5 cigarettes, candy and restaurant supply.

6 Q. Does your business have a name?

7 A. My business has a name, Krcho, K-R-C-H-O. We put the H
8 because it is pronounced in America for the people, for the
9 business.

10 Q. And who owns that business today?

11 A. Today owns the business, me and my husband.

12 Q. Do you have other employees?

13 A. No.

14 Q. Where is the business located?

15 A. 4465 Bronx Boulevard and 239 Street in the Bronx, zip code
16 10470.

17 Q. Can you describe what physical building is at that
18 location?

19 A. Building is like commercial building and the two floors,
20 like the two different businesses there, just --

21 Q. And do you know what section of the Bronx that is?

22 A. I don't understand what you are asking.

23 Q. Do you know what section or neighborhood in the Bronx that
24 area is?

25 A. I quite don't understand that question. I'm sorry.

D355dor5

Krc0 - direct

1 Q. That's okay. I will move on.

2 A. Okay.

3 Q. What types of products do you sell?

4 A. Cigarettes, candy, paper bags, shopping bags and some paper
5 cups, coffee. Stuff like that.

6 Q. And to what customers do you sell these products?

7 A. I selling these products only to the customer who has a
8 cigarette license and registered business. I'm only to do
9 business to business. We are not open to the public.

10 Q. So you sell to other businesses?

11 A. Yes.

12 Q. Do you know if all of the products that you sell are
13 manufactured in New York State or also out of New York State?

14 A. Only what I selling is from the New York State. I'm second
15 chain -- chain in the circumstance. I'm not stamping license,
16 I'm like the sub-jobbers, that means I buy cigarette from the
17 company who is stamping like the HRA from Long Island, I get
18 them over here to Manhattan. That's my supplier. And candy I
19 buying also from the Sultana who is over here also located in
20 the Bronx.

21 Q. Are you familiar with a business located at 4194 White
22 Plains Road in the Bronx?

23 A. Yes, I do. That is my customer before. When he sell
24 cigarette he buy from me cigarette about four years before,
25 then he losing cigarette license. Whatever it is he happened,

D355dor5

Krc0 - direct

1 he changed owner or something, then he don't buy from me
2 anymore.

3 Q. Do you know the name of that customer?

4 A. No, I don't.

5 Q. Do you know the name of the business located at that
6 address, 4194 White Plains Road?

7 A. Before when they buy from me that's 1M Stationery.

8 Q. 1M Stationery?

9 A. Yes, but they changing every year name of the business,
10 owner of the business. Usually we collecting every year like
11 the license from them. But we never actually asking for the
12 name owner or something like that. We got like the number,
13 customer number, then we recognize like that and the license
14 but it is not in the license name, only business name.

15 Q. And how long has that business been a customer of yours?

16 A. When he buy from me he was the buying about maybe two,
17 three years, then he stopped.

18 Q. And when was the most recent time that the customer at 4194
19 White Plains Road purchased items from your business?

20 A. I really don't know.

21 Q. I want to direct your attention now to January 7th of 2012.
22 Were you working that day?

23 A. Yes, I do.

24 Q. What were you doing?

25 A. That was the Saturday. I'm open from 8:00 to 2:00. I

D355dor5

Krc0 - direct

1 closed my business and I delivered order for one of my
2 customers in the Yonkers. I delivered that, collect money, sat
3 down into my car, take the highway and go shopping for my home
4 like the groceries, whatever I needed; food, fruit and veggies.

5 Q. What kind of car were you driving that day?

6 A. Toyota Silver RAV 4.

7 Q. And approximately what time did you finish the delivery in
8 Yonkers and then go shopping for yourself?

9 A. Probably I finish with the Yonkers I'm not sure exactly
10 time, but possibly 2:15, 2:20 because that's very close to me
11 is a couple of blocks.

12 Q. And then to what area do you go after that?

13 A. After that I go in the area Pelham Parkway in the Bronx
14 Lydig Avenue what is possibly about 3 or 4 miles from my
15 business and probably 2 miles from my house.

16 Q. How long were you in the area of Pelham Parkway and Lydig
17 Avenue?

18 A. I was there probably about one hour in the three different
19 locations shopping in the super market, fruit and veggies, one
20 small market. So, I'm in the car and driving home.

21 Q. Approximately what time do you think you went home from the
22 area of Lydig Avenue?

23 A. About 15 to 4:00.

24 Q. So 3:45?

25 A. Yeah.

D355dor5

Krc0 - direct

1 Q. And where is your home?

2 A. 185 East 206th Street.

3 Q. And approximately what time did you arrive in that area?

4 A. About 15 to 4:00 I reached there.

5 Q. What were you carrying with you inside of your car that
6 day?

7 A. In the back of my car it is a lot of shopping stuff. I
8 have big purse what is in this time in the trunk of my car. I
9 have next to me one big wallet where is the money what, but I
10 took part of the money from the delivery, pay bills, probably
11 \$1,000, maybe more, my money, but I really don't know how much
12 I spent what is there of that was in the small shopping bag
13 next to the seat next to me. Everything else in the back in
14 the car you could -- behind me, probably about 20 shopping
15 bags.

16 Q. And other than the money that you described in the small
17 bag that was next to you, do you have any other money in the
18 car?

19 A. I have other money in the car. In my big purse what is
20 there when I go shopping I put under in the trunk hiding and my
21 wallet over here in the small bags and money in the wallet.

22 Q. Approximately how much money do you think that you had in
23 your purse that day?

24 A. \$1,000 I know I have it because I put all of them hundreds
25 the guy pay me. He paid me about \$1,800 and he give me

D355dor5

Krc0 - direct

1 thousand single that I had in the trunk in the big bag and the
2 rest of them, small of them, I put in the -- in there in my
3 wallet.

4 Q. When you say that was from the money that the guy paid you,
5 referring to the delivery that you had made?

6 A. Yes. I got all the \$1,800 this day.

7 Q. That was part of your business proceeds?

8 A. Yes. And I have some of my money that I spent it. What I
9 don't spend it I really -- actually, I don't even know,
10 honestly.

11 Q. When you got into the area of your house, where did you
12 park your car?

13 A. When I got in my area I always drive when I shopping,
14 parking in the front of my door if I have room. I didn't have
15 room. I go a little bit down about four or five cars, it is
16 like the small street, it is like the empty lot. It is the
17 another side has a couple of buildings.

18 Q. Do you know the name of that street is?

19 A. St. George's Cross.

20 Then, as soon as I park my car -- as soon as I open my
21 door gentleman already put the leg that you can't close door.
22 He put a hand in my face. He wearing mask with gloves and he
23 started pushing me back in the car. I want to get out.
24 Another gentleman, he go around my car with a knife with a
25 button like that, is in my car. When I see him in my car I go

D355dor5

Krc0 - direct

1 crazy. I started screaming I want to get out but gentleman
2 wrestling with me, he want to push me back. He hit me first
3 time. I even don't know in the blink of the eyes it is maybe
4 20, 30 seconds everything happened. I don't know how, I just
5 pushing him and get out. And I was the very scared because my
6 building is this side but guy is still in my car second. I
7 couldn't go across, I started running differently. When I
8 running there because one lady already, thank God, see and call
9 the cops, neighbor. I started running but guy chasing me,
10 grabbed me again, hit me right here. I could see it in the
11 heaven's sky, stars. I don't know how is that happened.

12 Then, after that --

13 THE COURT: Let me -- let's ask some questions. We
14 want to avoid narrative answers so wait for the next question.

15 THE WITNESS: Okay.

16 Q. How many individuals were there that approached you in your
17 car?

18 A. One of them approach over here, other go behind and get in
19 my car; two people.

20 Q. And you said that they were wearing masks, correct?

21 A. Yes.

22 Q. Are you able to provide any description of these two
23 individuals?

24 A. That's the two male, not too big, not too small, bigger
25 than me, not so heavy, maybe 170 pounds. Something like that.

D355dor5

Krc0 - direct

1 Q. Other than masks do you recall any of the other clothing
2 that they were wearing?

3 A. Black of them. Black clothes.

4 Q. How many times were you hit?

5 A. Two times.

6 Q. Was that both by the first individual or by both
7 individuals?

8 A. No, no. Just person who approach me. Person with the
9 knife in the car, he just searching there and I was out and the
10 car in the car, he still in the car.

11 Q. In what part of the body were you hit?

12 A. He hit me over here first time and second time he hit me
13 over here.

14 Q. Just for the record, you are pointing to different areas.

15 Could you tell us in words what area you are pointing to?

16 A. Behind my ear.

17 Q. Behind your ear?

18 A. Yes.

19 Q. And also --

20 A. Yes. Over here and over here.

21 Q. The top of your forehead?

22 A. Yes.

23 Q. You also said that the second person had a knife. Can you
24 describe what the knife looked like?

25 A. I only saw it when he press the button and knife coming

D355dor5

Krc0 - direct

1 out. That's the only thing what I see.

2 Q. And what was that person doing inside of your car?

3 A. He is the one who took my wallet, he is the one who took my
4 key. What I had behind me, floor mat from the houses, they
5 took my key from houses, they took my key from garage, from my
6 business. They took all of my keys. They took all of my
7 wallet, credit cards, everything. He searched there and he
8 took forever he find but he never touched any groceries.

9 Q. So, aside from your wallet and your keys, were any other
10 items taken in?

11 A. Yes. In my wallet is a lot of pictures, credit card,
12 driver license, social security number. Everything.

13 Q. What about the purse in the back of your car, was that item
14 taken?

15 A. They didn't -- they didn't find that.

16 Q. Did you report this robbery to the police?

17 A. Yes, I do.

18 Q. Ms. Krc0, how did you feel during the robbery?

19 MS. STAFFORD: Objection.

20 A. Very bad.

21 MR. ROTH: Objection, your Honor.

22 THE COURT: Sustained as to form. Next question.

23 BY MS. MASELLA:

24 Q. After this robbery did you have any concerns with respect
25 to your business?

D355dor5

Krc0 - direct

1 A. I have to close my business. I can't work anymore. I
2 can't look over my shoulder every time.

3 MS. STAFFORD: Objection, your Honor.

4 THE COURT: Overruled, but let's move on.

5 MS. MASELLA: One moment, your Honor.

6 (Pause)

7 MS. MASELLA: No further questions, your Honor.

8 THE COURT: Cross-examination, Ms. Stafford?

9 MS. STAFFORD: Yes. Thank you, your Honor.

10 CROSS EXAMINATION

11 BY MS. STAFFORD:

12 Q. Good afternoon, Ms. Krc0. I just have a few questions for
13 you.

14 A. Okay.

15 Q. About how tall are you?

16 A. 5.6.

17 Q. 5'6"?

18 A. Yeah.

19 Q. And you said the persons that robbed you that day were
20 about your height or a little bit shorter?

21 A. No. I think a little bit bigger.

22 Q. A little bit bigger.

23 A. Yes. Bigger than me.

24 Q. And you spoke to the police shortly after that robbery,
25 didn't you?

D355dor5

Krc0 - cross

1 A. Yes, I did.

2 Q. And you tried to be as accurate as possible when you spoke
3 to them, isn't that correct?

4 A. Yes.

5 Q. And that's because you wanted the police to apprehend the
6 people who robbed you, right?

7 A. Yes.

8 Q. Do you recall describing the two men that robbed you as
9 black males about 5'7"?

10 A. I can't say they black. They had black mask.

11 Q. And you also met with the prosecutors in this case, didn't
12 you?

13 A. With who?

14 Q. With Ms. Masella prior to testifying here today?

15 A. Oh, yes. I did.

16 Q. And, when you spoke to her you were aware that there were
17 other people in the room, other individuals, other prosecutors,
18 other agents? Do you recall anybody else being in the room?

19 A. When?

20 Q. When you spoke to Ms. Masella?

21 A. With other people? No.

22 Q. Do you recall when you were speaking to Ms. Masella if
23 anyone was taking notes while you were speaking?

24 A. I really didn't even pay attention did she taking any notes
25 or not. I just talked with her.

D355dor5

Krc0 - cross

1 Q. When you described this event that day do you recall
2 telling her that the gloves -- you recall the robbers wearing
3 that day, being cheap leather?

4 A. Yes, I did.

5 MS. STAFFORD: Thank you. No further questions.

6 THE WITNESS: You're welcome.

7 THE COURT: Mr. Roth?

8 MR. ROTH: No questions, your Honor.

9 THE COURT: Any redirect?

10 MS. MASELLA: No, your Honor.

11 THE COURT: You can step down. Thank you Ms. Krc0.

12 THE WITNESS: Can I say one more?

13 THE COURT: No. There is no question pending. But,
14 thank you for your time.

15 THE WITNESS: You're welcome.

16 THE COURT: Do you have another witness here?

17 MS. LESTER: We can put on another witness, if your
18 Honor would like.

19 THE COURT: How long is the witness?

20 MS. LESTER: We can put on a really quick ATF witness.

21 THE COURT: Let's do that. Let's call one more
22 witness. We are on a roll.

23 MS. LESTER: The government calls ATF agent Jose Ruiz.
24 JOSE RUIZ,

25 called as a witness by the Government,

D355dor5

Krc0 - cross

1 having been duly sworn, testified as follows:

2 THE COURT: State your name and spell your name, first
3 and last for the record.

4 THE WITNESS: I'm Jose Ruiz. J-O-S-E, R-U-I-Z.

5 THE COURT: Okay, Mr. Ruiz, that sounds perfect, just
6 the right distance right volume right pace.

7 You may proceed, Ms. Lester.

8 MS. LESTER: Thank you, your Honor.

9 DIRECT EXAMINATION

10 BY MS. LESTER:

11 Q. Good afternoon.

12 A. Good afternoon.

13 Q. Where do you work?

14 A. With the Bureau of Alcohol, Tobacco and Firearms.

15 Q. Is that known as the ATF?

16 A. Yes.

17 Q. And what is your title there?

18 A. Special agent.

19 Q. How long have you been a special agent with ATF?

20 A. Since July of 2000.

21 Q. And what are your duties and responsibilities as a special
22 agent?

23 A. I conduct investigations into firearms trafficking, gangs,
24 violent crimes.

25 Q. Directing your attention to January 19th of last year, do

D355dor5

Ruiz - direct

1 you recall whether you were working that day?

2 A. Yes.

3 Q. What was your assignment on that day?

4 A. I was a party of the arrest team.

5 Q. Do you recall who you were planning to arrest that day?

6 A. Jermaine Dore.

7 Q. And do you know in fact whether Mr. Dore was arrested on
8 that day?

9 A. Yes, he was.

10 Q. Do you recall where the address -- I'm sorry, where the
11 arrest took place, generally?

12 A. In the Bronx.

13 Q. And, do you recall what time it was that the arrest took
14 place?

15 A. It was approximately 6:00 a.m.

16 Q. What was your role in the execution of the arrest, if any?

17 A. I was just part of the arrest team that made entry into the
18 residence and assisted with the arrest.

19 Q. Do you know whether there were any searches conducted?

20 A. Yes.

21 Q. Were you involved in that in any way?

22 A. Yes, I was.

23 Q. Could you please describe for the jurors what you did?

24 A. I assisted in the search of a bedroom in the apartment.

25 Q. Do you recall what, if anything, you found during the

D355dor5

Ruiz - direct

1 search?

2 A. We found a couple of cell phones, ski masks and gloves.

3 Q. What did you do with those items that you recovered?

4 A. We turned them over to our, like, vault coordinator and
5 asset forfeiture team so they can enter it into our case
6 management system and into our vault.

7 Q. Is that your usual procedure with respect to items that are
8 seized during searches?

9 A. Yes.

10 Q. I put before you what's been marked for identification as
11 Government Exhibits 72, 73 and 74. Could you take a look at
12 those for me?

13 Looking first at Government Exhibit 72, do you
14 recognize that item?

15 A. Yes. It is a cell phone that we took from the residence.

16 Q. And how do you know that it's the cell phone that was
17 actually taken from the residence that day?

18 A. From the evidence label, it was the defendant's name is on
19 it and the date that we took it, and I remember the phone
20 because of the cracks on it.

21 Q. And now, directing your attention to Government Exhibit 73,
22 what is that item?

23 A. A cell phone and a charger.

24 Q. Do you recognize that?

25 A. Yes.

D355dor5

Ruiz - direct

1 Q. How do you recognize it?

2 A. It's the cell phone. Again, just from looking at it I
3 remember taking that and the date that it was taken, the
4 address and the name of the defendant.

5 Q. And directing your attention now to Government Exhibit 74;
6 do you recognize that?

7 A. Yes.

8 Q. What is it?

9 A. It's the ski masks and the gloves that we took from the
10 residence.

11 MS. LESTER: Your Honor, the government offers
12 Government's Exhibits 72, 73 and 74.

13 THE COURT: Any objection?

14 MS. STAFFORD: No objection.

15 MR. ROTH: No, your Honor.

16 THE COURT: Okay, so Government's Exhibits 72, 73 and
17 74 are received.

18 (Government's Exhibits 72, 73 and 74 received in
19 evidence)

20 MS. LESTER: Your Honor, may we show the jury the
21 contents of Government Exhibit 74; the ski mask and gloves?

22 THE COURT: Yes, you may.

23 MS. LESTER: Is your preference that I hold it up?

24 THE COURT: You can hold it up or give it to them.

25 A JUROR: May we take it out and look at it?

D355dor5

Ruiz - direct

1 THE COURT: Right. No objection. It is not sealed.

2 Are there more questions?

3 MS. LESTER: No. I have no further questions.

4 THE COURT: No further questions.

5 Cross-examination, Ms. Stafford.

6 MS. STAFFORD: Your Honor, it is potentially going to
7 be at least 15 minutes.

8 THE COURT: Why don't we do this. Why don't we break.
9 We will break today. I will let you look at it again tomorrow,
10 folks, but rather than start a cross that we can't finish, it
11 is a smooth breaking point right now, we have had a full enough
12 day. I think you folks have been working hard so you can leave
13 that there. Thank you, Ms. Correia.

14 Tomorrow we are going to start at 9:30. Make sure you
15 are here at 9:30 and we can use the whole morning and keep this
16 trial moving so we can use the momentum.

17 Don't discuss the case with anyone. Don't do any
18 research or anything like that. Keep an open mind. We are at
19 the very beginning of the case, still a lot to do, still have
20 to hear my instructions on the law which that's the last thing
21 before you get the case, so I don't want you making spot
22 decisions or making any kind of findings at this stage. Way
23 too early for that.

24 Okay? Have a good night and I will see you tomorrow
25 at 9:30. Be here before 9:30. We will have coffee and stuff

D355dor5

Ruiz - direct

1 in the room. Bring your note books. Leave them there and
2 Mr. Halegua will collect them from you.

3 Tomorrow morning go straight into the jury room. It
4 will be open from the hall. You can go straight in there and
5 make yourself comfortable and we will bring you out at 9:30.
6 Have a good night.

7 All rise for the jury.

8 (Continued on next page)

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Ruiz - direct

1 (Jury not present)

2 THE COURT: Have a seat.

3 Let's give the jurors five minutes or so to file out
4 so we don't bump into them.

5 Same thing for you, Agent, if you don't mind, if you
6 can be here around 9:15 and get you up in the stand and ready
7 to go at 9:30. Okay?

8 Anything we need to cover before we break for the day?

9 MS. FONTIER: No. Thank you, your Honor.

10 THE COURT: No. Okay so tomorrow if everybody can be
11 ready by 9:15 and that way we have a buffer too. So, give the
12 jurors a couple minutes.

13 (Adjourned to 9:30 a.m., Wednesday, March 5, 2013.)

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